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"LAW NOTES" YEAR BOOK,

1929.

AN ALPHABETICAL DIGEST OF THE CHIEF STATUTES, RULES, ORDERS, AND CASES OF THE YEAR 1928.

By

THE EDITORS OF "LAW NOTES."

LONDON:

THE "LAW NOTES" PUBLISHING OFFICES,

25 & 26, CHANCERY LANE, LONDON, W.C.2.

1929

PRINTED IN GREAT BRITAIN BY
C. F. ROWORTH LTD., 88, FETTER LANE, LONDON, E.C.

PREFACE.

The first "Law Notes" Year Book was published on the 1st January, 1922, and was followed by three more. The four Year Books between them covered the years 1921 to 1924 inclusive. Then came the vast legislation of 1925. We were so busy with the Property Statutes that we had no time to compile the Year Book for 1926, nor, given the time, would it have been possible to find the space to incorporate the new Acts. The series of Year Books was reluctantly suspended. It is now resumed in reponse to numerous requests.

As we said in the Preface to the first Year Book, the idea of the book is to put the practising lawyer in touch with current legal happenings—to furnish him with a guide to recent changes in the law. With this end in view, we have in the following pages called attention not only to the Statutes of the year, but also to the Rules and Statutory Orders likely to be most generally useful, and to the most important Cases decided by the Courts in 1928. It has, of course, been impossible to include all the Cases or to set out all the Statutes, Rules and Orders in full, but, where possible, the gist of the latter has been stated, and in every case an indication of the means

whereby the practitioner may discover for himself the provisions of the Statute, Rule or Order referred to in the text.

An attempt has been made to bridge the gulf between the old and the new series by referring shortly to the chief Statutes and Rules of the years 1925, 1926 and 1927. It was impossible to include the Cases and Statutory Orders of those years.

The reader will notice a mysterious "1" placed before the number of each page. This is intended to facilitate reference in subsequent years.

We hope to publish another Year Book next year and to continue the series unbroken. Next year's Index will incorporate the Index to the present book, and the Index of the 1931 Year Book will be a consolidated Index for the three years together.

EDITORS OF "LAW NOTES."

December 14th, 1928.

ADDENDUM.

On p. 135 reference is made to a Law of Property Act, 1928. There was every indication that the Bill to amend sect. 146 of the Law of Property Act, 1925, by giving the Court power to relieve an underlessee from forfeiture for whatever cause the head lease was forfeited, would be passed before publication; and we intended to insert its provisions here. But unexpectedly, though passed by the House of Commons, the Bill had only been read a first time in the House of Lords when that House adjourned.

EDS. L. N.

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LIST OF ABBREVIATIONS.

B. W. C. C. ..... = Butterworth's Workmen's Compensation Cases.
C. A. ..... = Court of Appeal.
C. C. A. ..... = Court of Criminal Appeal.
C. S. ..... = Court of Session.
Cr. App. R. ..... = Criminal Appeal Cases.
D. or Div. Ct. ..... = Divisional Court.
Gazette ..... = London Gazette.
H. L. ..... = House of Lords.
J. P. ..... = Justice of the Peace.
Jud. Com. ..... = Judicial Committee.
L. G. R. ..... = Knight's Local Government Reports.
L. J. ..... = Law Journal Reports.
L. J. News. ..... = The Weekly Law Journal.
L. T. ..... = Law Times Reports.
L. T. J. or L. T. News. = Law Times Newspaper.
P. C. ..... = Privy Council.
R. S. C. ..... = Rules of Supreme Court.
Sc. ..... = Scotland.
S. R. & O. ..... = Statutory Rules and Orders.
S. J. or Sol. J. ..... = Solicitors' Journal.
T. C. ..... = Tax Case Reports.
T. L. R. ..... = Times Law Reports.
W. N. ..... = Weekly Notes.

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"LAW NOTES" YEAR BOOK, 1929.

ACCUMULATIONS.

Infant member of fluctuating class.—See *Re King*, Romer, J. (Discussed 1928 "Law Notes," pp. 250 *et seq.*)

Law of Property Act, 1925, s. 165.—Income of residuary personalty was directed to be accumulated for twenty-one years after the testator's death for the benefit of the children of A. who should attain twenty-one. A. had two children born within the twenty-one years. It was held that there was no intestacy, from the end of the twenty-one years from the testator's death, as regards income not applied to the maintenance of the infant children. The children having been born within the twenty-one years, the direction to accumulate surplus income contained in sect. 43 of the Conveyancing Act, 1881 (now sect. 31 of the Trustee Act, 1925), came into play within the twenty-one years, and by sect. 165 of the Law of Property Act, 1925, the years of minority accumulation were not to be counted in the twenty-one years allowed for accumulation. There was, therefore, a valid trust for accumulation during the minority of the children and no intestacy arose. Also, quite apart from sect. 165, the moment one child attained a vested interest as a member of the contingent class, there could be no question of intestacy as to any part of the capital or income. (*Re Maber, Ward* v. *Maber*, Astbury, J.)

ADMINISTRATION OF ASSETS.

Act.—The Administration of Estates Act, 1925, consolidated the enactments relating to the administration of the estates of deceased persons. Some of its sections were afterwards replaced without substantial alteration by sections of the Judicature Act,

1925. (See "Law Notes" Guide to the New Property Statutes, 2nd ed., and Supplement, January, 1929.)

Administrator appointing trustee.—An administrator with the will annexed can, after paying all the debts and clearing the estate, appoint two trustees of the will to take his place. (*Re Ponder*, (1921) 2 Ch. 59, applied. *Re Pitt, Pitt* v. *Mann*, Clauson, J.)

The administrators of a landowner who dies intestate leaving a widow and infant children, after having cleared the estate, cannot appoint trustees under sect. 42 of the Administration of Estates Act, 1925, for that section does not apply, both because the widow takes an interest in the residuary estate, and because the children are only contingently entitled on attaining twenty-one or marrying. When the estate is fully administered, the personal representatives become trustees for sale in virtue of the Administration of Estates Act, 1925, s. 33. When that date comes they should, under sect. 36 of the Act, make a vesting assent vesting the land in themselves as trustees. (*Re Yerburgh, Yerburgh* v. *Yerburgh*, Tomlin, J.)

Bond: Sureties' remedies.—If an administrator threatens to distribute the estate without providing for a liability to which the estate is subject, the sureties to the administration bond are justified in starting an action for administration and applying for the appointment of a receiver and an injunction. (*Re Anderson-Berry, Harris* v. *Griffiths*, C. A.)

Legacy subject to a charge.—A testator gave a policy of insurance to A., the policy being subject to a mortgage, and directed that his debts should be paid out of a special fund. It was held that A. could have the mortgage paid out of the special fund. The testator had shown a contrary intention within sect. 35 of the Administration of Estates Act, 1925. The direction was not a direction for payment of debts out of any of the funds mentioned in sub-sect. (2) of sect. 35. It was also held, applying *Re Birch*, (1909) 1 Ch. 787, that in so far as the special fund was insufficient to pay the mortgage, the sum charged on the policy was payable out of the policy moneys. (*Re Fegan, Fegan* v. *Fegan*, Tomlin, J.)

Settled land: Remainderman.—Where a tenant for life of land dies intestate without known next of kin, and the settlement determines at his death, the Court will make a grant of letters of administration to the remainderman. (*In the Estate of Bordass*, Hill, J.)

ADMINISTRATION OF JUSTICE.

The Administration of Justice Act, 1928, contains various amendments of the Supreme Court of Judicature (Consolidation) Act, 1925, and a few other Acts. For the most part its provisions are of little general importance. They are dealt with under the appropriate headings.

ADVERTISEMENTS.

Extended powers of making bye-laws to prevent advertisements disfiguring the rural scenery, &c. were given to local authorities by the Advertisements Regulation Act, 1925.

AGENCY.

Commission: By whom paid.—Although commission is usually paid by the vendor, an express bargain may throw the commission upon a purchaser. (*Bow's Emporium, Ltd.* v. *A. R. Brett & Co., Ltd.*, H. L.)

Commission: When earned.—An agent when employed to make enquiries about a particular business, with a view to his employers acquiring it, on terms of a commission on the purchase price to be paid to him if business is transacted, is entitled to commission, even where the actual purchase is ultimately effected through the intervention of another agent, provided that his services are really instrumental in bringing about the transaction. (*Bow's Emporium, Ltd.* v. *A. R. Brett & Co., Ltd.*, H. L.)

Mistake as to principal.—Work was done by the plaintiff at the order of H. under the impression that he was acting as agent for X., to whom estimates were addressed, but when the plaintiff applied for payment he was informed that Y. was the principal, and he thereupon sued H. It was held that H. was liable. (*Gardiner* v. *Heading*, C. A.)

Power of attorney: Cheque.—The plaintiff gave a power of attorney in favour of T. (a solicitor) to do various things in the plaintiff's name and on his behalf. The power did not expressly authorise drawing cheques, but later the plaintiff wrote to his (the plaintiff's) bankers saying that he wished the power to cover the drawing of cheques drawn on them by T. "without restriction." T. drew a cheque, signing his client's name and adding "by T., his attorney," the cheque being given to the defendants in payment for a motor bought for T. himself. The plaintiff was held to be entitled to recover the money from the defendants, the power and the letter being limited to acting for the plaintiff in the management of his affairs. (*Reckitt* v. *Barnett, Pembroke and Slater, Ltd.*, H. L.)

AGRICULTURE.

Agricultural Credits Act, 1928.—The object of this Act is to provide financial assistance for farmers. It deals with—

I. Long-term credits.

II. Short-term credits.

Part I.—Long-term credits.—Sect. 1 is designed to encourage the formation of a company having for its principal objects the making of loans on mortgages of agricultural land and of loans under the Improvement of Land Acts, 1864 and 1899, for agricultural purposes. If such a company is formed, the Treasury is authorised to make advances to the company, to procure the underwriting of its debentures, and to subscribe for its debentures (within stated limits).

By sect. 2 (*inter alia*), the company to be formed is to be a company limited by shares and registered under the Companies Acts, 1908 to 1917; its dividends are to be restricted to 5 per cent.; loans made by it are not to exceed two-thirds of the estimated value of the mortgaged property, and are to be repayable by instalments spread over not more than sixty years or repayable on such other terms as may be authorised by the memorandum or articles.

By sect. 3, the debentures of the company will be authorised trust investments.

Part II.—Agricultural short-term credits.—This Part is much more important. It enables a farmer to create in favour of a bank approved by the Minister a fixed or floating charge on his farming stock or other agricultural assets as security for money advanced or to be advanced to him (sects. 5—7). The charge will be outside the Bills of Sale Acts (sect. 8 (1)), but will require registration in the Land Registry (sect. 9); it will be exempt from the possession, order and disposition clause of the Bankruptcy Act (sect. 8 (4)), but not from the provisions of that Act as to fraudulent preference, and, in fact, those provisions are strengthened by sect. 8 (5) on lines similar to sect. 212 of the Companies (Consolidation) Act, 1908; as regards growing crops, it will take priority over a mortgage of the land created after the Act (sect. 8 (6)), but will be no protection against distress for rent, rates or taxes (sect. 8 (7)). The charge, whether fixed or floating, will not prevent the farmer from selling any of the property which is subject to the charge. (Sects. 6 (3), 7.)

Charge on farming stock, &c.—Sect. 5 provides that—(1) It shall be lawful for a farmer as defined by this Act by instrument in writing to create in favour of a bank as so defined a charge (hereinafter referred to as an agricultural charge) on all or any of the farming stock and other agricultural assets belonging to him as security for sums advanced or to be advanced to him or paid or to be paid on his behalf under any guarantee by the bank and interest, commission and charges thereon.

(2) An agricultural charge may be either a fixed charge, or a floating charge, or both a fixed charge and a floating charge.

(3) The property affected by a fixed charge shall be such property forming part of the farming stock and other agricultural assets belonging to the farmer at the date of the charge as may be specified in the charge, but may include (a) in the case of live stock, any progeny thereof which may be born after the date of the charge; and (b) in the case of agricultural plant, any plant which may whilst the charge is in force be substituted for the plant specified in the charge.

(4) The property affected by a floating charge shall be the farming stock and other agricultural assets from time to time

belonging to the farmer, or such part thereof as is mentioned in the charge.

(5) The principal sum secured by an agricultural charge may be either a specified amount, or a fluctuating amount advanced on current account not exceeding at any one time such amount (if any) as may be specified in the charge, and in the latter case the charge shall not be deemed to be redeemed by reason only of the current account having ceased to be in debit.

(6) An agricultural charge may be in such form and made upon such conditions as the parties thereto may agree, and sureties may be made parties thereto.

(7) For the purposes of this Part of this Act—" Farmer " means any person (not being an incorporated company or society) who, as tenant or owner of an agricultural holding, cultivates the holding for profit; and " agriculture " and " cultivation " shall be deemed to include horticulture, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like. " Bank " means any firm, incorporated company, or society, carrying on banking business and approved by the Minister. " Farming stock " means crops or horticultural produce, whether growing or severed from the land, and after severance whether subjected to any treatment or process of manufacture or not; live stock, including poultry and bees, and the produce and progeny thereof; any other agricultural or horticultural produce whether subjected to any treatment or process of manufacture or not; seeds and manures; agricultural vehicles, machinery and other plant; agricultural tenant's fixtures and other agricultural fixtures which a tenant is by law authorised to remove. " Other agricultural assets " means a tenant's right to compensation under the Agricultural Holdings Act, 1923, for improvements, damage by game, disturbance or otherwise, and any other tenant right.

Effect of a fixed charge.—Sect. 6 provides that—(1) A fixed charge shall, so long as the charge continues in force, confer on the bank the following rights and impose upon the bank the following obligations, that is to say, (a) a right, upon the hap-

pening of any event specified in the charge as being an event authorising the seizure of property subject to the charge, to take possession of any property so subject; (b) where possession of any property has been so taken, a right, after an interval of five clear days or such less time as may be allowed by the charge, to sell the property either by auction or, if the charge so provides, by private treaty, and either for a lump sum payment or payment by instalments; (c) an obligation, in the event of such power of sale being exercised, to apply the proceeds of sale in or towards the discharge of the moneys and liabilities secured by the charge, and the cost of seizure and sale, and to pay the surplus (if any) of the proceeds to the farmer.

(2) A fixed charge shall, so long as the charge continues in force, impose on the farmer the following obligations:—(a) An obligation whenever he sells any of the property, or receives any money in respect of other agricultural assets comprised in the charge, forthwith to pay to the bank the amount of the proceeds of the sale or the money so received, except to such extent as the charge otherwise provides or the bank otherwise allows; the sums so paid to be applied, except so far as otherwise agreed, by the bank in or towards the discharge of moneys and liabilities secured by the charge; (b) an obligation in the event of the farmer receiving any money under any policy of insurance on any of the property comprised in the charge, or any money paid by way of compensation under the Diseases of Animals Acts, 1894 to 1927, in respect of the destruction of any live stock comprised in the charge, or by way of compensation under the Destructive Insects and Pests Acts, 1877 to 1927, in respect of the destruction of any crops comprised in the charge, forthwith to pay the amount of the sums so received to the bank, except to such extent as the charge otherwise provides or the bank otherwise allows; the sums so paid to be applied, except so far as otherwise agreed by the bank, in or towards the discharge of the moneys and liabilities secured by the charge.

(3) Subject to compliance with the obligations so imposed, a fixed charge shall not prevent the farmer selling any of the property subject to the charge, and neither the purchaser, nor, in the case of a sale by auction, the auctioneer, shall be concerned

to see that such obligations are complied with notwithstanding that he may be aware of the existence of the charge.

(4) Where any proceeds of sale which in pursuance of such obligation as aforesaid ought to be paid to the bank are paid to some other person, nothing in this Act shall confer on the bank a right to recover such proceeds from that other person unless the bank proves that such other person knew that the proceeds were paid to him in breach of such obligation as aforesaid, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge.

Effect of a floating charge.—Sect. 7 provides that—(1) An agricultural charge creating a floating charge shall have the like effect as if the charge had been created by a duly registered debenture issued by a company:

Provided that (a) The charge shall become a fixed charge upon the property comprised in the charge as existing at the date of its becoming a fixed charge—(i) upon a receiving order in bankruptcy being made against the farmer; (ii) upon the death of the farmer; (iii) upon the dissolution of partnership in the case where the property charged is partnership property; (iv) upon notice in writing to that effect being given by the bank on the happening of any event which by virtue of the charge confers on the bank the right to give such a notice. (b) The farmer, whilst the charge remains a floating charge, shall be subject to the like obligation as in the case of a fixed charge [see sect. 6 (2), *supra*] to pay over to the bank the amount received by him by way of proceeds of sale, in respect of other agricultural assets, under policies of insurance, or by way of compensation, and the last foregoing section shall apply accordingly: Provided that it shall not be necessary for a farmer to comply with such obligation if and so far as the amount so received is expended by him in the purchase of farming stock which on purchase becomes subject to the charge.

General provisions as to charges.—Sect. 8 provides that—(1) An agricultural charge shall have effect notwithstanding anything in the Bills of Sale Acts, 1878 and 1882, and shall not be deemed to be a bill of sale within the meaning of those Acts.

(2) Agricultural charges shall in relation to one another have priority in accordance with the times at which they are respectively registered under this Part of this Act.

[See sect. 9, *infra,* as to registration.]

(3) Where an agricultural charge creating a floating charge has been made, an agricultural charge purporting to create a fixed charge on, or a bill of sale comprising any of the property comprised in the floating charge shall, as respects the property subject to the floating charge, be void so long as the floating charge remains in force.

(4) Farming stock subject to an agricultural charge shall not, for the purposes of sect. 38 of the Bankruptcy Act, 1914, be deemed to be goods in the possession, order, or disposition of the farmer, in his trade or business, by the consent and permission of the true owner thereof, under such circumstances that he is the reputed owner thereof.

(5) Where a farmer who is adjudged bankrupt has created in favour of a bank an agricultural charge on any of the farming stock or other agricultural assets belonging to him, and the charge was created within three months of the date of the presentation of the bankruptcy petition and operated to secure any sum owing to the bank immediately prior to the giving of the charge, then, unless it is proved that the farmer immediately after the execution of the charge was solvent, the amount which but for this provision would have been secured by the charge shall be reduced by the amount of the sum so owing to the bank immediately prior to the giving of the charge, but without prejudice to the bank's right to enforce any other security for that sum or to claim payment thereof as an unsecured debt.

(6) Where after the passing of this Act the farmer has mortgaged his interest in the land comprised in the holding, then, if growing crops are included in an agricultural charge, the rights of the bank under the charge in respect of the crops shall have priority to those of the mortgagee, whether in possession or not, and irrespective of the dates of the mortgage and charge.

(7) An agricultural charge shall be no protection in respect of property included in the charge which but for the charge would have been liable to distress for rent, taxes, or rates.

(8) An instrument creating an agricultural charge shall be exempt from stamp duty.

Registration of charges.—Sect. 9 provides that—(1) Every agricultural charge shall be registered under this Act, within seven clear days after the execution thereof, and, if not so registered, shall be void as against any person other than the farmer:

Provided that the High Court on proof that omission to register within such time as aforesaid was accidental or due to inadvertence may extend the time for registration on such terms as the Court thinks fit.

(2) The Land Registrar shall keep at the Land Registry a register of agricultural charges in such form and containing such particulars as may be prescribed.

[See regulations, *infra*, p. 14.]

(3) Registration of an agricultural charge shall be effected by sending by post to the Land Registrar at the Land Registry a memorandum of the instrument creating the charge and such particulars of the charge as may be prescribed, together with the prescribed fee; and the Land Registrar shall enter the particulars in the register and shall file the memorandum.

[For fees and regulations, see *infra*, p. 13.]

(4) The register kept and the memoranda filed under this section shall at all reasonable times be open to inspection by any person on payment (except where the inspection is made by or on behalf of a bank) of the prescribed fee, and any person inspecting the register or any such filed memorandum on payment (except as aforesaid) of the prescribed fee may make copies or extracts therefrom.

(5) Any person may on payment of the prescribed fee require to be furnished with a copy of any entry in the register or of any filed memorandum or any part thereof certified to be a true copy by the Land Registrar.

(6) Registration of an agricultural charge may be proved by the production of a certified copy of the entry in the register relating to the charge, and a copy of any entry purporting to be certified as a true copy by the Land Registrar shall in all legal

proceedings be evidence of the matters stated therein without proof of the signature or authority of the person signing it.

(7) The provisions of the Land Charges Act, 1925, as to official searches under that Act, shall apply as if they were herein re-enacted and in terms made applicable to this Part of this Act.

(8) Registration of an agricultural charge under this section shall be deemed to constitute actual notice of the charge, and of the fact of such registration, to all persons and for all purposes connected with the property comprised in the charge, as from the date of registration or other prescribed date, and so long as the registration continues in force:

Provided that, where an agricultural charge created in favour of a bank is expressly made for securing a current account or other further advances, the bank, in relation to the making of further advances under the charge, shall not be deemed to have notice of another agricultural charge by reason only that it is so registered if it was not so registered at the time when the first-mentioned charge was created or when the last search (if any) by or on behalf of the bank was made, whichever last happened.

[This follows the lines of sect. 197, as read with sect. 94, of the Law of Property Act, 1925.]

(9) The Lord Chancellor may make regulations prescribing anything which under this section is to be prescribed, subject as respects fees to the approval of the Treasury, and generally as to the keeping of the register and the filing of memoranda, the removal of entries from the register on proof of discharge, and the rectification of the register.

[The fees and regulations are set out, *infra*.]

No publication of charges.—Sect. 10 provides that—(1) It shall not be lawful to print for publication or publish any list of agricultural charges or of the names of farmers who have created agricultural charges.

(2) If any person acts in contravention of this section, he shall in respect of each offence be liable on summary conviction to a fine not exceeding twenty pounds:

Provided that no person other than a proprietor, editor, master printer, or publisher, shall be liable to be convicted under this section.

(3) No prosecution for an offence under this section shall be commenced without the consent of the Attorney-General.

(4) For the purpose of this section, "publication" means the issue of copies to the public, and "publish" has a corresponding meaning, and without prejudice to the generality of the foregoing definition the confidential notification by an association representative of a particular trade to its members trading or carrying on business in the district in which property subject to an agricultural charge is situate of the creation of the charge shall not be deemed to be publication for the purposes of this section.

Criminal offence.—Sect. 11 provides that—(1) If, with intent to defraud, a farmer who has created an agricultural charge (a) fails to comply with the obligations imposed by this Act as to the payment over to the bank of any sums received by him by way of proceeds of sale, or in respect of other agricultural assets, or under a policy of insurance or by way of compensation; or (b) removes or suffers to be removed from his holding any property subject to the charge; he shall be guilty of a misdemeanour and liable on conviction on indictment to penal servitude for a term not exceeding three years.

(2) Sect. 24 of the Criminal Justice Act, 1925, shall have effect as if offences under this section were included amongst the offences specified in the Second Schedule to that Act.

[So that a Court of summary jurisdiction may deal summarily with the offence if it thinks it expedient to do so and the accused consents.]

Overdrafts before the Act.—Sect. 12 provides that until the first day of January, 1931, the foregoing provisions of this Part of this Act shall be subject to the following modification:—

> Where a bank has before the passing of this Act made advances to a farmer, whether by means of an overdraft or otherwise, an agricultural charge created in favour of the bank shall be enforceable only in respect of moneys advanced in addition to and in excess of a sum equal to the amount of such advances outstanding at the passing of this Act.

Contract not to create charge void.—Sect. 13 provides that any farmer being the tenant of an agricultural holding shall have the

right to create an agricultural charge notwithstanding any provision in his contract of tenancy to the contrary.

Industrial and provident society's debenture.—By sect. 14 (1) a debenture issued by a society registered under the Industrial and Provident Societies Acts, 1893 to 1928, creating in favour of a bank a floating charge on property which is farming stock within the meaning of this Part of this Act, may be registered in like manner as an agricultural charge, and sect. 9 of this Act shall apply to such a charge in like manner as it applies to an agricultural charge, and the charge if so registered shall as respects such property be valid notwithstanding anything in the Bills of Sale Acts, 1878 and 1882, and shall not be deemed to be a bill of sale within the meaning of those Acts:

Provided that, where any such charge is so registered, notice thereof signed by the secretary of the society shall be sent to the central office established under the Friendly Societies Act, 1896, and registered there.

[Unlike debentures created by a company registered under the Companies Acts, 1908 to 1928, debentures created by an industrial or provident society are not, apart from this section, exempt from the Bills of Sale Acts. (*Re North Wales Produce and Supply Society, Ltd.*, (1922) 2 Ch. 340.)]

(2) Any such debenture may create a floating charge on any farming stock the property in which is vested in the society.

Agricultural credits fees.—By the Agricultural Credits Fees Order, 1928 (S. R. & O. 1928, No. 668/L. 26, price 1*d.*), the fees set forth in the First Schedule are to be taken under the Agricultural Credits Act, 1928, subject to the directions contained in the Second Schedule.

FIRST SCHEDULE.

Scale of Fees.	*s.*	*d.*
1. Any entry in, cancellation, or rectification of the register .....per name	1	0
2. Certificate of cancellation of a registration...per name	0	6
3. Personal search in the register or memorandum filed thereunder (except where the inspection is made by or on behalf of a bank) .....per name	1	0

	s.	d.
4. Personal search of the memoranda filed in the Registry under sect. 9 (3) of the Act during the previous seven days, but not including the day of search ..... per half-hour	2	6
5. Official search of the register (including issue of certificate) ..... per name	1	6
6. Certified copy of any memorandum filed under sect. 9 (3) of the Act ..... per name	1	6
7. Expediting an official search ..... per application	2	6
8. Telegraphing the result of an official search ..... per message	1	6
9. Telephoning the result of an official search (including cost of call if such cost does not exceed 1*s.*)	1	6

SECOND SCHEDULE.

Directions as to Fees.

1. All fees shall be prepaid by adhesive Land Registry stamps, which may be obtained at head Post Offices in England and Wales, and at sub-offices which transact Money Order business, or if unobtainable, by cash or by cheque, postal or money order made payable to H.M. Commissioners of Inland Revenue.

2. If a fee in excess of the prescribed fee is paid on, or is forwarded with, an application to the Registry, no refund of the amount of the excess may be claimed from the Registry.

Agricultural Credits Regulations.—The Agricultural Credits Regulations, 1928 (S. R. & O. 1928, No. 667/L. 25, price 2*d.*), came into force on October 1st, 1928.

1. *Form and particulars in register.*—The register to be kept at H.M. Land Registry shall contain the following particulars:—(1) the date of the instrument creating the charge; (2) the surname and Christian names of the farmer or farmers or name of the society whose farming stock and other agricultural assets are affected; (3) the amount of the loan; (4) whether the charge is a fixed or floating charge or both; (5) the name and address of the bank in whose favour the charge is made; and shall be in such form and may contain such additional or alternative particulars (if any) as the Land Registrar may determine.

2. *Form of applications.*—(1) Applications for registration, searches (official and otherwise), official certificates, certified copies of or extracts from the register of such memoranda filed thereunder as are open to public inspection, shall be made on and shall furnish the particulars set forth in the several forms for these purposes given in the Schedule hereto, or on such other forms as the Registrar shall from time to time determine.

[For registration in the farmer's name, the form to use is A.C. 1; for registration in the name of an agricultural society, Form A.C. 2; for an official search, Form A.C. 6; for a personal search, Form A.C. 8; for a certificate of cancellation, Form A.C. 4; for a certified copy of the memorandum filed in the Registry under the Act, Form A.C. 5; for the rectification of an entry in the register, Form A.C. 7. These are obtainable from the Stationery Office. The price of A.C. 1 is 2*d.*, or 25 for 3*s.*; all the others are 1*d.* each, and 25 for 1*s.*]

(2) Applications shall not, unless the Registrar otherwise directs, be accompanied by the original instruments in respect of which they are made.

3. *Cancellation of registrations.*—(1) Applications for the cancellation of a registration on discharge of the charge shall be made on and shall furnish the particulars set forth in the form given in the Schedule hereto, or on such other form as the Registrar shall from time to time prescribe.

[The form is A.C. 3.]

(2) Such evidence in respect thereof as the Registrar shall think necessary shall also be furnished if required.

4. *Rectifications of the register.*—On rectification of any entry in the register, such particulars, explanation and evidence in respect thereof as the Registrar shall think necessary, shall be furnished.

5. *Posting of applications.*—Applications accompanied by the prescribed fee must be sent by prepaid post addressed to the Agricultural Credits Superintendent, H.M. Land Registry, Lincoln's Inn Fields, London, W.C.2.

6. *Priority of applications for registration.*—(1) Application for registration delivered by post or under cover during the hours in which the office is open for registration shall be treated as having

been made or given at the same time and immediately before the closing of the office for that day and shall be numbered accordingly.

(2) Application for registration delivered by post or under cover between the hours of closing and of the next opening of the office for registration shall be treated as having been made or given at the same time and immediately after such opening and shall be numbered accordingly.

(3) In reckoning the number of days under sect. 9 (1) of the Act in which registration shall be effected, Sundays and other days when the Registry is not open to the public shall be excluded.

7. *Responsibility for accuracy, &c. of applications.*—Save in the case of applications for the modification or cancellation of a registration on discharge of the charge, the Registrar shall not be concerned to inquire into or otherwise verify the accuracy, validity or sufficiency of any matter or thing stated or appearing in any notice given or application made to him.

8. *Official searches.*—(1) Applications for an official search shall be prepared on the prescribed form and forwarded to the Registry in duplicate.

[The form is A.C. 6.]

(2) An official certificate of the result of searches shall extend to registrations effected during the day of the date of the certificate, and shall be issued only after the office is closed for registration on that date.

9. *Certified copies.*—For the purposes of sub-sects. (5) and (6) of sect. 9 of the Act the official stamp of H.M. Land Registry shall be a sufficient authentication on behalf of the Land Registrar of the certified copy of entries in the register.

10. *Sale of forms.*—(1) All forms except such as may from time to time be issued by direction of the Registrar free of charge shall be sold under arrangements to be made by H.M. Stationery Office, or otherwise as the Registrar may from time to time approve.

(2) No forms other than those so issued, sold or approved shall be accepted for registration.

11. *Interpretation.*—In these Regulations "the Act" means the "Agricultural Credits Act, 1928," and words or expressions, defined in the Act, have the same meaning in these Regulations as in the Act.

Agricultural Holdings Act: Arbitration costs. A valid agreement can be made between the landlord and tenant of an agricultural holding that, in a contemplated arbitration as to compensation under sect. 12 of the Agricultural Holdings Act, the successful party shall be entitled to costs on the High Court scale. It is not contrary to public policy nor rendered unenforceable by the fact that sect. 16 and par. 15 of Schedule II. of the Act provide that costs shall be in the arbitrator's discretion. In a case where the agreement had not been communicated to the arbitrator, who gave his award in favour of the landlord, and awarded that each party should pay his own costs, it was held that the agreement was enforceable. (*Mansfield* v. *Robinson,* Div. Ct.)

Agricultural Holdings Act: Compensation—High Court jurisdiction.—An action can be brought in the High Court to recover an agreed sum for compensation under the Agricultural Holdings Act, 1923. Sect. 19 of the Act, which makes sums agreed or awarded for compensation recoverable upon order made by the County Court, is permissive and not imperative. (*Horrell* v. *Bletso,* Talbot, J.)

Agricultural holding: Joint tenant—Compensation.—One of two joint tenants of a farm can give a valid notice of intention to claim compensation for disturbance under sect. 12 of the Agricultural Holdings Act, 1923, if he is the one who suffers all the loss. For example, where a farm was let to A. and B., but B. had been joined as tenant at the request and for the protection of the landlord, the compensation notice was validly given by A., who was living in the farm house and actually running the farm. The Court also held that a notice to quit given by B. before the landlord gave his notice to quit did not estop A. from claiming compensation. (*Howson* v. *Buxton,* C. A.)

Agricultural holding: Notice to quit.—A tenant, as much as a landlord, must give a twelve months' notice to quit, expiring

at the end of one of the years of the tenancy, notwithstanding any provision to the contrary in the contract of tenancy, under the Agricultural Holdings Act, 1925, s. 25. (*Flather* v. *Hood*, Charles, J.)

Annual returns of acreage cultivated, &c. can be required by the Minister from the occupier of agricultural land. (Agricultural Returns Act, 1925.)

Destructive insects and pests.—The Minister of Agriculture may order the removal and destruction of any crop (which includes seeds, plants, or any part thereof) infected with an insect which has been introduced into Great Britain or which is likely to cause the insect to spread. He may order compensation (and is no longer restricted in amount by the Destructive Insects Act, 1877, s. 3 (1) and (2), which are repealed). Insect includes bacteria and other vegetable or animal organisms and any agent causative of a transmissible crop disease. (Destructive Insects and Pests Act, 1927.)

Grading and marking of agricultural produce.—The Agricultural Produce (Grading and Marking) Act, 1928, breaks new ground. It provides for the grading and marking of agricultural produce, which by sect. 7 includes horticultural produce. It contains also special provisions as to eggs. (*See* post, *under* Eggs.)

Sect. 1 provides that (1) the Minister of Agriculture and Fisheries may by regulations prescribe designations (in the Act referred to as "grade designations") to indicate the quality of any articles of agricultural produce. The regulations must contain a definition (called "the statutory definition") of the quality indicated by every grade designation thereby prescribed.

[Regulations have been made as to apples and pears. (*See under* Apples, *post*.)]

(2) Where any person sells any article of agricultural produce to which a grade designation is applied, then, notwithstanding any contract or notice to the contrary, it will be deemed to be a term of the contract of sale that the quality of the article accords with the statutory definition indicated by the grade designation.

["Quality" includes the state and condition of the article. (Sect. 7.)]

(3) A grade designation will be deemed to be applied to an article if it is used by or on behalf of the vendor, when the article is sold or delivered or exposed or offered for sale, in any manner calculated to lead to the belief that the quality of the article in connection with which it is used accords with the statutory definition indicated by the grade designation.

Sect. 2 provides that the regulations may prescribe a mark (called a "grade designation mark") to represent any grade designation, and may authorise, or empower any person or body of persons to authorise, the marking with a grade designation mark of any article in respect of which such a mark has been prescribed or of any covering containing, or label attached to, any such article. (Sub-sect. (1).) "Covering" includes any vessel, box, crate, wrapper, tray, or other container; "label" includes any band or ticket. (Sect. 7.)

Any person who sells or delivers or exposes or offers for sale any article marked with a grade designation mark, or who uses any covering or label so marked, whether the article, covering or label was so marked by him or by some other person, will be deemed for the purposes of sect. 1 to use, in connection with the article marked or in connection with any article which is contained in the covering or to which the label is attached, as the case may be, the grade designation represented by the mark. (Sub-sect. (2).) He will, therefore, impliedly contract that the quality of the article accords with the statutory definition.

Sub-sect. (3) imposes penalties for forging a grade designation mark; or for making, disposing of, or possessing any die, &c. for the purpose of forging a grade designation mark; or for using any mark so nearly resembling a grade designation mark as to be calculated to deceive. It is a defence to show that there was no intent to defraud.

Sub-sect. (4) provides that no person shall (under penalty of a 20*l.* fine) mark any article, covering or label with a grade designation mark unless he is authorised to do so by or under regulations made under this Act.

The duty of enforcing the provisions of the Act is on the county or county borough councils, except that as respects the

administrative County of London the duty is on the Common Council of the City of London and the councils of the metropolitan boroughs. (Sect. 5.)

Grading and marking of agricultural produce: General Regulations, 1928.—By Regulations dated 20th September, 1928, the Minister of Agriculture and Fisheries was empowered to appoint a committee to be styled the "National Mark Committee" with power to authorise the marking, with grade designation marks, of any articles for which such marks are prescribed. (S. R. & O. 1928, No. 674, 1*d*.)

Wages.—The Agricultural Wages (Regulation) Act, 1924, is infringed if an agricultural labourer is agreed to be paid the minimum weekly wage, but it is also agreed that he shall buy from the employer each week a specified quantity of milk, the price to be deducted from his wages. (*Hayes* v. *Curtis*, Div. Ct.)

Wages: Minimum wage.—An order made under the Agricultural Wages (Regulation) Act, 1924, provided that the wages payable to a male worker of full age should not be less than 30*s*. per week of fifty hours, and that where a whole-time male worker was employed by the week and the hours of work agreed between him and his employer in any week were less than fifty, the rate of wages applicable to that worker should be such as to secure to him the wages which would have been payable if the agreed hours had been fifty. This order was held to be *intra vires* and a farmer was rightly convicted for paying a worker less than 30*s*. in respect of Good Friday week, the worker not being required to work on Good Friday. (*Seabrook and Sons, Ltd*. v. *Jones*, Div. Ct.)

AGRICULTURE, MINISTRY OF.

Fees.—For fees under the Tithe Annuities Apportionment Act, 1921, the Law of Property Acts, the Redemption of Rent Rules, 1925, the Renewable Leaseholds Regulations, 1925, and the Manorial Incidents (Extinguishment) Rules, 1925, see S. R. & O. 1926, No. 301, price 2*d*.

AIR NAVIGATION.

Orders.—Previously existing Air Navigation Orders have been extensively amended on important points by three amending orders, which are too long and too detailed to be summarised, and must be consulted in the original. (Air Navigation Amendment Orders, 1928; S. R. & O. 1928, Nos. 36 (price 2*d.*) and 588 and 591 (price 1*d.* each).)

ALIENS.

Enemy aliens.—For removal of disqualifications, see the Former Enemy Aliens (Disabilities Removal) Act, 1925.

ALKALI, &c. WORKS.

The Alkali, &c. Works Regulation Act, 1906, has been extended by the Alkali, &c. Works Order, 1928. The expression "noxious or offensive gas" includes also sulphuric anhydride; sulphurous anhydride (except that arising solely from the combustion of coal); bromine and iodine and their acid compounds; arsenic and its compounds; ammonia; pyridine; fumes from benzene and paraffin oil works. The descriptions in the First Schedule to the Act of 1906 of the works numbered 5, 13, 18, 19 and 20, are amended, and the First Schedule also includes:—22, benzine; 23, pyridine; 24, bromine; and 25, hydrofluoric acid works. (S. R. & O. 1928, No. 26, price 1*d.*)

ALLOTMENTS.

The Act of 1922 was amended by the Allotments Act, 1925, on several points.

ANIMALS.—*And see* Dogs.

Diseases.—The Diseases of Animals Act, 1927, amends the Diseases of Animals Acts, 1894 to 1925. *Inter alia,* the power to order the slaughter of animals under sect. 7 of the Act of 1894 is made discretionary, and a power of immediate slaughter of imported animals is given.

Diseases of Animals Act, 1894.—On a charge under this Act of not having notified with all practicable speed the existence of

foot and mouth disease, the onus of proof is on the accused to show that he had no knowledge of the facts. Sect. 57 of the Act expressly so provides. (*Wilson* v. *Yates*, Div. Ct.)

Gift for benefit of.—A gift for the maintenance of an animals' benevolent society is good even if it is not confined to animals useful to mankind. (*Re Grove-Grady*, *Plowden* v. *Lawrence*, Romer, J.)

Performing animals.—Exhibitors and trainers have to be registered with the local authority, *i.e.*, usually the County Council or County Borough Council. (Performing Animals (Regulation) Act, 1925.)

Poison.—The Protection of Animals Act, 1911, was amended by the Protection of Animals (Amendment) Act, 1927, which substitutes the following proviso for the proviso to sect. 8:—

"Provided that, in any proceedings under paragraph (b) of this section, it shall be a defence that the poison was placed by the accused for the purpose of destroying *insects and other invertebrates*, rats, mice, or other small *ground* vermin, *where such is found to be necessary in the interests of public health, agriculture, or the preservation of other animals, domestic or wild, or for the purpose of manuring the land*, and that he took all reasonable precautions to prevent *injury thereby to* dogs, cats, fowls, or other domestic animals *and wild birds*."

The words in italics are new. The words "injury thereby to" are substituted for "access thereto of."

APPLES.—*See also* MERCHANDISE MARKS.

Grading.—See the Agricultural Produce (Grading and Marking) (Apples and Pears) Regulations, 1928, made under the Agricultural Produce (Grading and Marking) Act, 1928. (S. R. & O. 1928, No. 675, price 1*d*.)

ARBITRATION.

Agreement for.—An agreement for the sale of a business was conditional on the efficiency of certain plant being satisfactorily proved by scientific tests. Any dispute as to the agreement, or

any clause, matter, or thing therein contained was made the subject of arbitration. It was held that the arbitration clause covered a dispute as to whether the agreement had been discharged by reason of the tests proving unsatisfactory. (*De la Garde* v. *Worsnop & Co.*, Clauson, J.)

Assignment of contract.—Moneys due under a building contract containing an arbitration clause were assigned to a bank by way of security; disputes arose and were submitted to arbitration. It was held that the arbitration clause was a personal covenant, and could not be assigned. The arbitrator had jurisdiction to deal with the dispute, but in so doing it was his duty, not merely to consider the terms of the contract, but also its application and enforcement, having regard to the legal position of the parties. Here the contractors had, by their own act in assigning, divested themselves of the right to claim the debt, and an award in their favour could not be upheld. (*Cottage Club Estates, Ltd.* v. *Woodside Estates Co.* (*Amersham*), *Ltd.*, Wright, J.)

Conciliation Board.—Workers were employed at a colliery under an agreement which incorporated a Conciliation Board agreement securing a subsistence allowance to low paid colliery workers, which provided for disputes being settled by the Chairman of the Board. It was held that the decision of the Chairman was not to be treated as the award of an arbitrator. The Court of Appeal thought that the decision was akin to that of a valuer fixing one ingredient making up the total wage to be paid, and that the parties had agreed that the amount and conditions of the allowance, when fixed by the decision should be part of their agreement with each other, and as such must be construed by the Court as it stood. (*Charles and Others* v. *Cardell Collieries, Ltd.*, C. A.)

Partnership: New partner.—Partnership articles gave power to a partner to nominate a successor, subject to the consent of the other partners, which was not to be unreasonably withheld. The articles contained an arbitration clause, and gave a partner or his nominee the right to require arbitration if of opinion that the consent was unreasonably withheld. The nominee was unable to

apply to the Court under sect. 5 of the Arbitration Act, 1889, to appoint an arbitrator, for he was not a party to the submission. (*Re Franklin and Swathling's Arbitration*, Maugham, J.)

ARCHITECT.

Building contract.—In giving an interim certificate under a building contract, an architect acts as agent for the building owner and not as arbitrator. He is therefore liable for giving the certificate negligently. (*Wisbech R. D. C.* v. *Ward*, Sankey, J. Overruled on appeal on the ground that there was no negligence; question of agency not decided by C. A.)

ARMY.

The Army and Air Force (Annual) Act, 1928, fixed the maximum numbers of the Army at 153,500, and of the Air Force at 32,500. It also contains, in addition to amendments of sects. 115 and 117 of the Army Act, the following:—

Billeting.—The prices to be paid to the keeper of a victualling house for billeting are set out in the First Schedule.

Death penalty.—The following are no longer the subject of capital punishment:—Leaving his commanding officer to go in search of plunder, Forcing a safeguard, Forcing or striking a sentinel, Breaking into a house or other place in search of plunder, Being a soldier acting as sentinel sleeps or is drunk on his post. These were always only subject to the death penalty when the offender was on active service. Striking a commanding officer, being in the execution of his duty, was originally a capital offence in all cases. The Army and Air Force (Annual) Act, 1925, made it so only if the offence was committed on active service. The present Act makes it not capital even then. The position is exactly the same in respect of the offence of disobeying in such a manner as to show a wilful defiance of authority any lawful command given personally by a superior officer in execution of his duty. (Sect. 4.)

ARRANGEMENT, DEEDS OF.

Office for registration was transferred to the Board of Trade by sect. 22 of the Administration of Justice Act, 1925. For procedure and fees, see the Deeds of Arrangement Rules, 1925 (S. R. & O. 1925, No. 795/L. 16, price 6*d.*), and the Deeds of Arrangement Fees Order, 1925 (S. R. & O. 1925, No. 818, price 1*d.*).

Security given by trustee.—There is no power to extend the time within which a trustee under a deed of arrangement is required to give security by the Deeds of Arrangement Act, 1914, s. 11. (*Re Early, Early, Smith and Pavey*, Astbury, J.)

AUCTIONS.

Knock-outs.—The Auctions (Bidding Agreements) Act, 1927, makes it an offence for a "dealer"—*i.e.*, a person who in the normal course of his business attends sales by auction for the purpose of purchasing goods with a view to reselling them—to agree to give, or give, or offer any gift or consideration to any other person as an inducement or reward for abstaining, or for having abstained, from bidding at a sale by auction, or to agree to accept, or accept, or attempt to obtain from any dealer any such gift or consideration. But a written agreement entered into by a dealer before the auction with one or more persons to purchase goods *bonâ fide* on a joint account is not within the Act, provided that a copy of the agreement is deposited with the auctioneer before the goods are purchased. Where a dealer has been prosecuted and convicted of an offence under the Act, the seller may, as against a purchaser who was a party to the agreement, treat the contract as a contract induced by fraud.

BANK.

Inspection of books.—The Court can, under sect. 7 of the Bankers' Books Evidence Act, 1879, order inspection of the banking account of a person other than the judgment debtor. It will exercise this power if the account is controlled by the debtor and used by him for his own purposes. (*Ironmonger & Co.* v. *Dyne*, C. A.)

Negligence: Advantage taken of wrongful payment.—If a company's bank negligently and in breach of the company's instructions pays cheques drawn on the company's account signed by one director only, and such cheques are paid to the company's creditors, the bank can debit the customer's account with the amount paid. This rests on the equitable doctrine under which a person who has in fact paid the debts of another without authority is allowed to take advantage of his payment. (*Liggett (Liverpool), Ltd.* v. *Barclays Bank, Ltd.*, Wright, J.)

BANK NOTES.

Defacing.—If any person prints, or stamps, or by any like means impresses, on any bank note any words, letters or figures, he shall, in respect of each offence, be liable on summary conviction to a penalty not exceeding 1*l.* (Currency and Bank Notes Act, 1928, s. 12.) Bank note includes all outstanding currency notes issued under the Currency and Bank Notes Act, 1914, which are now transferred to the Bank of England. (*Ibid.*, ss. 11 and 4.)

Tender.—In view of the Bank's authority to issue 1*l.* and 10*s.* notes, Bank of England notes are made legal tender for the payment of any amount, not only for sums over 5*l.* (Currency and Bank Notes Act, 1928, s. 1 (2).)

BANKRUPTCY.

Act.—The Bankruptcy (Amendment) Act, 1926, made several amendments in the Bankruptcy Act, 1914.

Act of bankruptcy.—A verbal statement by a debtor to the managing clerk of the solicitors representing creditors can be an act of bankruptcy as being notice of suspension of payment. (*Re a Debtor* (No. 737 of 1928), C. A.)

Assets.—If a bankrupt, whose business involves dealing in electrical goods, refuses to disclose his source of supply on the ground that to do so might expose the persons who supplied him to proceedings for infringement of patent rights, he can be compelled to answer. (*Re Jawett,* Astbury, J.)

Deposit on petition is now 7*l.* 10*s.* 0*d.* on creditor's petition, though still 5*l.* on debtor's. If the petition is to administer a

deceased debtor's estate, the fee is 7*l.* 10*s.* on a creditor's petition, 5*l.* if the personal representatives present the petition. (Bankruptcy Rules, 1926; S. R. & O. 1926, No. 539/L. 16, price 1*d.*)

Discharge.—Rules 230 and 231 of the Bankruptcy Rules, 1915, were annulled and the following Rules substituted:—

"230. On application by a bankrupt for his discharge, the Official Receiver shall file his report and send a copy thereof to the bankrupt by registered post not less than seven days before the time fixed for hearing the application.

"231. Where a bankrupt intends to dispute any statement with regard to his conduct and affairs contained in the Official Receiver's report, he shall, not less than two days before the hearing of the application for discharge, file in Court a notice in writing, specifying the statements in the report, if any, which he proposes at the hearing to dispute and serve a copy of the notice upon the Official Receiver. Any creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the Official Receiver's report, shall not less than two days before the hearing of the application file in Court a notice in writing of the intended opposition stating the grounds thereof and serve a copy of the notice upon the Official Receiver and upon the bankrupt." (The Bankruptcy Rules (No. 1), 1928; S. R. & O. 1928, No. 3/L. 3, price 1*d.*)

Fees.—The Bankruptcy Fees Order, 1928 (S. R. & O. 1928, No. 651/L. 24, price 1*d.*), has substituted a new Table for Table C. in the existing Order, and considerably increased the fees payable.

Forms.—New Forms were substituted for the forms numbered 61, 108, 109, 110, 111, and 112 in Part I. of the Appendix to the Bankruptcy Rules, 1915, by the Bankruptcy Rules, 1927. (S. R. & O. 1927, No. 96/L. 8, price 1*d.*)

Judgment debt.—The Bankruptcy Court will not go behind a judgment debt which is the result of a compromise made at the hearing and assented to by the defendant on counsel's advice unless it can be shown that the compromise was in some way improper or

entered into without full knowledge of the facts. (*Re a Debtor* (No. 27 of 1927), Div. Ct.)

Judgment summons.—If a judgment summons be issued in bankruptcy under sect. 107 of the Bankruptcy Act, 1914, on a judgment for damages, and another judgment summons be issued on a judgment for costs, the practice of the Court is to grant preference to the summons in respect of costs because this is about a claim for which the applicant is personally liable to his own solicitors. (*Re Winter, Ex parte Williams*, Clauson, J.)

Married woman.—If a married woman engages in a series of speculative transactions in foreign currencies involving the making of genuine commercial contracts extending over a long period of time, she is carrying on a business within the Bankruptcy Act, 1914, s. 125 (1). (*Re a Bankruptcy Notice* (No. 292 of 1928), C. A.)

Partnership.—If some members of a firm commit an act of bankruptcy, but no act of bankruptcy is committed by or on behalf of the other partners, the firm cannot be adjudicated bankrupt. A receiving order was made against a firm, the alleged act of bankruptcy being the execution of a deed of arrangement. Subsequently it was discovered that other persons were members of the firm. An adjudication order was made against them. It was held that this order must be discharged, for, in the circumstances, the receiving order against the firm was itself invalid. (*Re Gowland Bros., Ex parte Proctor Shotton*, Div. Ct.)

Receiving order: Law of Distress Amendment Act, 1908.—A landlord having obtained judgment against his tenant for rent, rates, &c., served the tenant with a bankruptcy notice founded on this judgment. The notice was not complied with, and the landlord presented a bankruptcy petition. After presentation of the petition, the landlord served the tenant's sub-tenants with notice under the Law of Distress Amendment Act, 1908, s. 6, requiring them to pay their rent to himself, and one of the sub-tenants accordingly paid the landlord 62*l*. Even giving credit for this payment, however, there remained due to the landlord 155*l*. at the date when the petition was heard. As a

sum of 50*l.* still remained due, the receiving order could still be made. The landlord had not sacrificed his right to a receiving order by proceeding under sect. 6 of the Law of Distress Amendment Act, 1908. (*Re a Debtor* (No. 549 of 1928), C. A.)

Receiving order, refusal of.—A debtor was under liability to pay 71*l.* odd by three instalments. Default having been made in payment of the first two instalments, judgment was signed for 47*l.* The creditor requested payment of the third instalment, which had then become due, but on tender of the third instalment being made, the creditor refused to accept any payment less than the full 71*l.* It was held that, without deciding whether apart from the request to pay the third instalment the creditor would have been entitled to refuse tender thereof so as to keep the debt above 50*l.*, yet the request having been made the refusal of the tender was "sufficient cause" within the Bankruptcy Act, 1914, s. 5 (3), for refusing to make a receiving order. (*Re a Debtor, Ex parte Lawrence,* Astbury, J.)

Receiving order: Rescission.—A petitioning creditor offered to withdraw a bankruptcy petition if he was paid solicitor and client costs and the costs incurred by the creditor in other proceedings against third parties. It was held that the receiving order obtained on the petition could not be allowed to stand. The process of the Bankruptcy Court had been abused, and the receiving order must be set aside under the Bankruptcy Act, 1914, s. 5 (3), as being a case where the Court was satisfied that, for sufficient cause, no order ought to be made. (*Re a Debtor* (No. 883 of 1927), C. A.)

Registration of petition and receiving order.—By the Land Charges Act, 1925, ss. 2 and 6, a petition and a receiving order are registrable in the Land Registry. The duty of seeing to the registration is thrown on the bankruptcy officials. (Bankruptcy Rules, 1925; S. R. & O. 1925, No. 1239/L. 41, price 1*d.*) New forms for Forms 13A, 13B and 33A, given in the Appendix to these rules, were subsequently substituted by the Board of Trade.

Reputed ownership.—At the commencement of a bankruptcy goods were in the hands of a wharfinger to the order of an agent

for the bankrupt. The goods had already been sold by the bankrupt to a buyer who had been given a delivery order signed by the agent in whose name they stood, but delivery had not been taken by the buyer. A claim to the goods by the trustee in bankruptcy, under sect. 38 of the Bankruptcy Act, 1914, failed because the bankrupt was not the reputed owner in these circumstances. (*Simeons (C.) & Co., Ltd.* v. *Durand's Trustee*, Finlay, J.)

Reputed ownership: Antique furniture trade.—There is a custom in the antique furniture trade for a retailer to take goods from the wholesale dealers on sale or return, so as to prevent the reputed ownership clause from applying to these goods in the event of his bankruptcy. Further, although the custom does not extend to the goods of private customers, its existence prevents the reputation of the bankrupt's ownership attaching to any of the goods exposed in the shop. (*Re Ford; Restall, Brown and Clennel's Case; Powell's Case*, Clauson, J.)

Secured creditor.—An order appointing a receiver by way of equitable execution directed payment of rents of leaseholds to the receiver, and on the debtor's subsequent bankruptcy the trustee obtained a discharge of the order without prejudice to the creditor's contention that he was a secured creditor for the judgment debt. The result was that, even assuming that the appointment of a receiver was effective against leaseholds, and that the order could, in virtue of the saving clause of the order of discharge, take effect after discharge, yet on the true construction of sects. 40 and 167 of the Bankruptcy Act, 1914, the creditor was not a secured creditor in bankruptcy. (No reference was made to sect. 195 of the Law of Property Act, 1925, and it does not appear whether the execution had been registered under the Land Charges Act, 1925.) (*Re Bueb*, Clauson, J.)

Taxations.—The Bankruptcy Rules (No. 2), 1928 (S. R. & O. 1928, No. 849/L. 27, price 1*d.*), result in an addition to the Bankruptcy Rules of a new rule to stand as Rule 98A, the effect of which is to transfer bankruptcy taxations to the Taxing Masters of the Supreme Court. Consequential amendments contained in a schedule are made in the existing rules.

BEER.

Deposit in warehouse for exportation.—See Finance Act, 1928, s. 11, and the Deposit of Beer in Warehouse Regulations, 1928, dated August 7th, 1928. (S. R. & O. 1928, No. 619, price 2*d.*)

Drawback on sugar.—See the Beer (Drawback on Sugar) Regulations, 1928. (S. R. & O. 1928, No. 640, price 1*d.*)

Spoilt beer.—See the Spoilt Beer Regulations, 1928, dated 24th July, 1928. (S. R. & O. 1928, No. 594, price 1*d.*)

BICYCLES.

Lighting.—Under the Roads Transport Lighting Act, 1927, the general rule is that any vehicle on any road during the hours of darkness must carry two white front lamps and one red rear lamp (*see post, under* Road Transport), but, by s. 5, bicycles without sidecar, tricycles not propelled by mechanical power, and invalid carriages require one white light only in front instead of two; and bicycles and tricycles not propelled by mechanical power need not carry a red rear light if they have attached "an unobscured and efficient red reflector." Bicycles without sidecar, whether propelled by mechanical power or not, and tricycles not propelled by mechanical power need not carry any lamp while being wheeled by a person on foot as near as possible to the near or left-hand edge of the carriage way. And see the Regulations made under the Act under Road Transport, *post*.

BILLS OF EXCHANGE.

Collecting bank: Sect. 82.—The chief accountant of a branch of the A. Bank, having, as such, authority to sign cheques on the bank's behalf, fraudulently drew cheques on the B. Bank payable to the C. Bank. By letters written on the A. Bank's office paper the accountant directed the C. bank to credit the amount of these cheques to the joint account of himself and his wife. The cheques were crossed. It was held that the C. Bank was not liable to the A. Bank for the amounts of these cheques in the absence of negligence (which was here found to exist). The Bills of

Exchange Act, s. 82, applied to protect the C. Bank. A banker collects for a customer where it collects a cheque in terms payable to itself, but accompanied with a written direction to credit the account of a customer. (*Lloyds Bank, Ltd.* v. *Chartered Bank of India*, Mackinnon, J.)

Material alteration.—"Material alteration" in sect. 64 of the Bills of Exchange Act, 1882, does not include alteration which is not deliberate but the result of accident. Where, therefore, a bank note is accidentally mutilated so that the number is no longer distinguishable, the note is not thereby avoided. (*Hong Kong and Shanghai Banking Corporation* v. *Lo Lee Shi*, P. C.)

Payment of bill.—The acceptor of a bill of exchange gave instructions to his bank to pay the bill at maturity. The payees endorsed the bill in blank and gave it to their clerk with instructions to take it to the payees' own bank for collection. The clerk, in fraud of his employers, presented the bill to the acceptor's bank and received payment, absconding with the proceeds. The acceptor's bank was held not to be liable to the payees. The acceptor's instructions to pay did not operate to make the bank trustees for the payees, or to cast any duty of care on the bank in favour of the payees. The bill being a negotiable instrument, and there being nothing in the circumstances to justify a refusal of prompt payment, the bank could rely on sect. 59 of the Bills of Exchange Act, 1882. According to the law merchant, presentation for payment over the counter of a bill endorsed in blank, or an open cheque, although unusual, is always recognised as due presentation. (*Auchteroni & Co.* v. *Midland Bank, Ltd.*, Wright, J.)

BILLS OF SALE.

Consideration: Whether truly stated.—The consideration for a bill of sale was stated to be 1,600*l.* paid to the grantor by the grantee on June 24th, 1925. In point of fact no money was paid to the grantor on that date, but 600*l.* was paid by the grantee on that date to a creditor of the grantor at the latter's request, and the grantor owed the grantee 1,000*l.* at that date. It was held that the consideration was truly stated. This point

was not argued before C. A. (*Stott* v. *Shaw and Lee, Ltd.*, Div. Ct.)

Construction: Whether collateral mortgage a defeasance.—At the same time that a bill of sale was granted (for which the consideration was stated to be 1,600*l.*) a mortgage was given to secure the 1,600*l.* The bill made the money repayable on December 24th, 1925; the mortgage provided for repayment by instalments, subject to the mortgagee's right to require repayment on December 24th, 1925, or at any time thereafter. The Court held that the mortgage did not substantially alter the bill, and was not a defeasance the omission of which from the bill would invalidate the registration under sect. 10 (3) of the Bills of Sale Act, 1878. (*Stott* v. *Shaw and Lee, Ltd.*, C. A.)

Registration.—The registrar may require an additional copy or additional copies. (Administration of Justice Act, 1925, s. 23.)

BIRDS.—*See also* LAPWINGS.

Cage birds.—The cage must be big enough for the bird freely to stretch its wings. (Protection of Birds Act, 1925, s. 2.)

Decoy birds: Bird-lime.—As to prohibition of the use of these, see Protection of Birds Act, 1925.

Wild birds protection.—Orders were made under the Wild Birds Protection Acts, 1880 to 1908, in 1928 as follows:—Barrow-in-Furness (S. R. & O. 1928, No. 312, 1*d.*); Cambridge (412, 1*d.*); Dorset (512, 2*d.*); Hastings (457, 1*d.*); Hertford (596, 2*d.*); St. Helens (313, 1*d.*); Somerset (373, 1*d.*); Southend-on-Sea (350, 1*d.*).

BISULPHITE OF CARBON.

Conveyance.—See the Bisulphite of Carbon (Conveyance) Regulations. (S. R. & O. 1928, No. 597, price 2*d.*)

BRITISH GUIANA.

The British Guiana Act, 1928, enabled the King in Council to create a new legislature for British Guiana. This was done

by the British Guiana (Constitution) Order in Council, 1928, dated July 13th, 1928 (price 6*d.*).

BUTTONS.

Duty.—The Finance Act, 1928, s. 9, imposes for five years from the 28th April, 1928, a customs duty of $33\frac{1}{3}$ per cent. on buttons imported into the United Kingdom; Empire products pay only two-thirds of the full duty.

"Buttons" means buttons made of any material, and whether finished or unfinished, of a description commonly used for the fastening or decorating of wearing apparel or household linen, not being buttons forming part of any other article.

CHARITY.

Enrolment fees.—See order of Charity Commissioners, dated 13th November, 1925, as to fees for enrolment. ((1925) W. N. 420.)

CHRISTIAN SCIENCE HOME.

The Minister of Health has power to grant exemption to nursing homes "carried on in accordance with the practice or principles of the body known as the Church of Christ Scientist" from the operation of the Nursing Homes Registration Act, 1927 (see sect. 7).

CINEMATOGRAPH.

Cinematograph Films Act, 1927.—This Act contains important provisions about the following:—

Blind-booking.—This is forbidden by sect. 1.

Advance booking.—Restricted to nine months in agreements made after 1st October, 1928, and six months in agreements made after 1st October, 1930. (Sect. 2.)

Registration of films.—This is provided for by Part II. of the Act; no unregistered film is to be exhibited under a penalty on summary conviction of 20*l.* a day. (Sect. 5.) Registered films are marked in a prescribed manner showing whether they are British or foreign. (Sect. 11.) (*And see* REGISTRATION REGULATIONS, *infra*, p. 36.)

Quota of British films.—This is secured by Part III. The renter's quota is controlled by sects. 13—18, and the exhibitor's quota by sects. 19—22. Failure to comply with either quota is heavily punishable, both summarily and on indictment. (Sect. 24.) Both renters and exhibitors must be licensed. (Sects. 17, 20.) The quota is set out in Sched. I. The renter's quota is $7\frac{1}{2}$ per cent. up to 31st March, 1929, 10 per cent. to 31st March, 1931; exhibitor's quota, 5 per cent. and $7\frac{1}{2}$ per cent. respectively. (For regulations, *see infra, under* EXHIBITORS and RENTERS.)

Exemption.—Certain kinds of films (*e.g.*, topical and educational) are excluded. (Sect. 27.)

Duty on British films.—The Finance Act, 1928, s. 7, reduces the duty on imported negative cinematograph films which are certified by the Board of Trade to satisfy the requirements of sect. 27 (3) of the Cinematograph Films Act, 1927 (which proscribes what films are to be deemed British films for the purposes of that Act). Such films are to be treated as blank film if the conditions specified in the Cinematograph Films (Customs Duty) Regulations, 1928, are complied with. (S. R. & O. 1928, No. 649, price 1*d.*) The regulations prescribe that (1) the films on importation must be entered for warehousing at an approved bonded warehouse; (2) the importer must state on the entry that a Board of Trade certificate has been issued to him in respect of the film or that he has applied or will apply for the issue of such a certificate; (3) the importer shall lodge the Board of Trade certificate with the proper officer of Customs and Excise at the warehouse together with (a) a declaration made before an officer of Customs and Excise by, or on behalf of, the importer that the film described in Entry No. , dated , is the film or part of the film to which the Board of Trade certificate relates, and (b) a complete copy of the scenario of the film, or where this cannot be lodged the importer shall produce evidence to the satisfaction of the Commissioners identifying the imported film with the Board of Trade certificate; (4) security for the removal of the films under revenue seal to the warehouse must be given to the satisfaction of the Commissioners.

Duty on scientific films.—The Finance Act, 1928, s. 8, exempts from the film duty imposed by sect. 3 (1) of the Finance Act, 1925, any film certified by the Royal Society of London for Promoting National Knowledge to be solely an illustration of scientific investigation for exhibition before members of a recognised scientific body and which is imported only for the purpose of such exhibition free of charge.

Exhibitors.—See the Cinematograph Films (Exhibitors) Regulations, 1928 (S. R. & O. 1928, No. 431, price 2*d.*) for the licence to be taken out by exhibitors and the records to be kept and returns to be made under sect. 21, sub-sects. (2) and (1) respectively of the Cinematograph Films Act, 1927.

Manufacture and storage of films.—The Manufacture of Cinematograph Film Regulations, 1928, have been made under the Factory and Workshop Act, 1901. They lay down precautions to be taken in the manufacture of films. They also apply to storerooms, *i.e.*, a room in which more than twenty reels or eighty pounds weight of film (whichever is the greater) is stored. The Regulations of 1921 are revoked. (S. R. & O. 1928, No. 82, price 2*d.* And see Factory Form, No. 997, Stat. Office, price 2*d.*)

References to High Court under the Cinematograph Films Act, 1927, s. 9 (1), are governed by R. S. C. Ord. LVD. (Rules (No. 1) of 1928; S. R. & O. 1928, No. 198/L. 10, price 2*d.*) They are assigned to the Chancery Division. Any person aggrieved by any such refusal or decision of the Board of Trade as is mentioned in sect. 9 (1) of the Act may within twenty-one days of the refusal or decision (or within such further time as the Court may allow) give to the Board of Trade notice in writing requiring the matter to be referred to the Court. The Rules provide for the consequent procedure. Service on the Board of Trade is effected by serving the Solicitor to the Board of Trade, Great George Street, S.W.1.

Registration Regulations.—These Regulations, made under the Cinematograph Films Act, 1927, s. 29, prescribe the method of application for registration (forms being given in a schedule),

and provide for alterations in the length of a film, for The Register, and for the Marking of Films. (S. R. & O. 1927, No. 1201, price 2*d*.) The fee of one guinea which, by Regulation 3 of those Regulations, is to accompany each application, was reduced to half a guinea in respect of films less than one thousand feet in length by Amending Regulations of 12th March, 1928. (S. R. & O., 1928, No. 168, price 1*d*.)

Renters.—By the Cinematograph Films (Renters) Regulations, 1928, renters must obtain a licence from the Board of Trade by application in the form set out in these Rules. The fee payable is five guineas. The Rules also set out forms of the renter's record book and of returns. (S. R. & O. 1928, No. 131, price 2*d*.)

Stripping.—See the Cinematograph Film Stripping Regulations, 1928. (S. R. & O. 1928, No. 84, price 2*d*.)

COLONIAL STOCK ACT, 1900.

Additions during 1928 to the lists of Stocks which are trust investments under sect. 2 of the Colonial Stock Act, 1900:—

New South Wales $5\frac{1}{4}$ per cent. Inscribed Stock, 1947—57 (under which title is now also included the Stock gazetted on the 27th May, 1927, under the title New South Wales $5\frac{1}{4}$ per cent. Conversion Loan, 1947—57). (*London Gazette*, 3rd Feb., 1928.)

Fiji Government 5 per cent. Inscribed Stock, 1946—53. (*London Gazette*, 4th May.)

New Zealand Government $4\frac{1}{2}$ per cent. Inscribed Stock, 1947. (*London Gazette*, 22nd May.)

Kenya Government $4\frac{1}{2}$ per cent. Inscribed Stock, 1950. (*London Gazette*, 19th June.)

The restrictions mentioned in sect. 2, sub-sect. (1), of the Trustee Act, 1925, apply to the above Stocks. (See Colonial Stock Act, 1900, s. 2.)

Treasury List.—A copy of the Treasury List of Colonial Stocks in respect of which the provisions of the Act are for the time being complied with was published as a House of Commons Paper (No. 93) of 1928, price 2*d*.

COMPANIES ACT, 1928.

This Act, except sect. 92, which relates to "share-hawking," is not to come into force until a date to be appointed by Order in Council. The Act prepares the ground for a consolidating Act which is to be introduced early in 1929. Meantime, the profession should make itself acquainted with the alterations which will be effected by the new Act when it is incorporated in the consolidating Act. The changes will be in danger of being lost sight of when they are so incorporated.

It is impossible in the space at our disposal to set out the 118 sections and three schedules of the Act in full. The King's Printer's copy runs to 119 pages. We can only call attention to the main changes effected by the Act.

Accounts.—Every company must keep proper books of account with respect to (a) all sums received and expended, (b) all sales and purchases of goods, and (c) the assets and liabilities. The books will be open to inspection by the directors at all times. (Sect. 39 (1) and (2).)

The directors must, not later than eighteen months after incorporation, and subsequently at least once in every calendar year, lay before a general meeting a profit and loss account (or an income and expenditure account, if the company is not trading for profit). The account must be made up to a date not earlier than nine months before the meeting, or twelve months if the company carries on business abroad or has interests abroad. But the Board of Trade may extend the above-mentioned times. (Sect. 39 (3).)

A balance sheet must also be laid before a general meeting every calendar year, must have attached to it a report by the directors as to the state of the company's affairs, dividend (if any) recommended, and amount proposed to be carried to reserve. (Sect. 39 (4).) As to the form of the balance sheet, see Sect. 40.

Except in the case of a private company, a copy of every balance sheet (including every document required by law to be annexed thereto), which is to be laid before a general meeting, together with a copy of the auditors' report, must be sent at

least seven days before the meeting to all persons entitled to receive notice of meeting. (Sect. 39 (6).)

Annual return.—Several amendments are made by sects. 6 and 7 in sect. 26 of the Act of 1908. An annual return containing certain particulars must be filed by a company not having a share capital. (Sect. 7.) Hitherto only a company having a share capital has had to make the annual return. By sect. 6, in the case of a company having a share capital, the return must have annexed to it an index of the names of the members if they are not arranged alphabetically in the list. It must also state the address of the registered office. But the most important alteration is with regard to the balance sheet. No longer will a company be able to file the same old balance sheet year after year, for, except where the company is a private company, the annual return must include a written copy, certified as true, of the last balance sheet, which has been audited by the company's auditors; and by sect. 39 of the new Act (*see under* ACCOUNTS, *ante*), as read with sect. 113 of the Act of 1908, a balance sheet has to be prepared and audited every year. As to the form of the balance sheet, see sect. 40.

Arrangements.—*See* COMPROMISES, *infra*, and RECONSTRUCTION AND AMALGAMATION, *infra*.

Auditors.—Sect. 86 makes some alterations in and additions to sect. 112 of the Act of 1908. That section makes a director or officer of the company ineligible for the post of auditor; the new section disqualifies also a partner or employee of any officer, unless the company is a private company. The new section also amends sub-sect. (5) as to the appointment of the first auditors. Auditors are entitled to attend any general meeting at which any accounts examined or reported on by them are to be laid before the company, and to make any statement or explanation.

Auditors cannot be exempted from liability for negligence by any provision in the articles or in any contract, but the Court can relieve them of liability under sect. 279 of the Act of 1908.

Balance sheet.—Lengthy new provisions are contained in sect. 40 with regard to the contents of every balance sheet of a company.

A member or debenture holder can demand gratis a copy of the last balance sheet and of the auditors' report. But this does not apply to a private company. (Sect. 41.)

See also under ACCOUNTS and ANNUAL RETURN, *ante*.

Capital: Alteration.—The powers of altering share capital conferred by sect. 41 of the Act of 1908 must be exercised by the company in general meeting. But no special resolution is required, even for sub-division of shares. (Sect. 13.)

The powers are made to apply to a company limited by guarantee and having a share capital. (Sect. 12.)

Capital: Alteration—Notice to registrar.—Sect. 42 of the Act of 1908 is amended by sect. 14. The chief amendment is that the notice of the alteration of share capital required to be given to the registrar must be given within one month. Notice must be given of redemption of redeemable preference shares (see sect. 18, *post*, p. 55), and of the cancellation of shares (otherwise than by a reduction of share capital under sect. 46 of the Act of 1908), as well as of consolidation, conversion of shares into stock and re-conversion of stock into shares.

Slight amendments are made in sect. 44 of the Act of 1908 by sect. 15. The notice of increase of share capital required to be given to the registrar must include such particulars as may be prescribed with respect to the classes of shares affected and the conditions subject to which the new shares have been or are to be issued; and a printed copy of the resolution authorising the increase must be forwarded with the notice.

Capital: Reduction.—Three alterations are made by sect. 19:—(a) A new section is substituted for sect. 48 of the Act of 1908 with regard to the addition of the words "and reduced" to the company's name. Those words need only be added to the company's name where the Court, on making the order confirming the reduction, so directs for special reasons. (b) In special circumstances, the Court may direct that sect. 49 of the Act of 1908 (which deals with objections of creditors and the settlement of a list of objecting creditors) shall not apply to a particular class or classes of creditors. (c) Sect. 40 of the Act of 1908, which gave power to return accumulated profits in reduction of

capital, is repealed—probably because it provided an easy method of evading payment of super-tax.

Capital: Reorganisation.—Sect. 45 of the Act of 1908 is repealed by sect. 33. Reorganisation of share capital which involves an alteration of the memorandum by the consolidation of shares of different classes, or the division of shares into shares of different classes, can at present be effected only under sect. 45. The new section makes such reorganisation an "arrangement" within sect. 120 of the Act of 1908, the procedure under which is simpler than under sect. 45.

Certificates, issue of.—Some amendments are made by sect. 42 in sect. 92 of the Act of 1908.

Colonial Register.—*See* DOMINION REGISTERS, *infra*.

Compromises with creditors and shareholders.—The Court's order approving an arrangement under sect. 120 will have no effect until an office copy of it is filed with the registrar. A copy of the order must be annexed to every copy of the memorandum subsequently issued. The majority required to approve the arrangement is altered. It is a majority in number representing three-fourths in value as before, but of those present and voting, not of those present. (Sect. 53.) *And see under* CAPITAL: REORGANISATION, *supra*, and RECONSTRUCTION AND AMALGAMATION, *infra*.

Debentures: Inspection of register.—Some slight amendments are made by sect. 46 in sect. 102 of the 1908 Act with regard to the inspection of the register of debenture holders and the right to have copies of the trust deed.

Debentures, re-issue of redeemed.—Sub-sect. (1) of sect. 104 of the Act of 1908 is redrafted and made clearer, and sub-sect. (2) is repealed, as is also sub-sect. (5) (b). (Sect. 47.)

Directors: Appointment or advertisement.—Some alterations are made by sect. 29 in sect. 72 of the Act of 1908, which provides that a person cannot be appointed as a director, and cannot be named as a director or proposed director, in any prospectus issued by or on behalf of the company within a year

after it is entitled to commence business, or in the statement filed in lieu of prospectus, unless two conditions are fulfilled:— (i) he must have signed and filed a written consent to act; and (ii) he must have either signed the memorandum for his qualification shares or signed and filed a written contract to take them from the company. These alterations are:—

(a) The section is extended so as to apply to the naming of a person as proposed director of an intended company in any prospectus issued in relation to that intended company.

(b) Four ways are mentioned in which the second condition may be fulfilled. The director must have either (1) signed the memorandum for his qualification shares, or (2) taken them from the company and paid or agreed to pay for them, or (3) signed and filed a written undertaking to take them from the company and pay for them, or (4) made and forwarded to the registrar a statutory declaration that shares to the amount of the qualification are standing in his name.

(c) If the director signs and files such an undertaking, he is in the same position as regards the shares as if he had signed the memorandum for them.

(d) Companies not having a share capital, and companies which were private companies before becoming public companies, are taken out of this section. [Private companies were always excluded.]

Directors: Assignment of office.—Notwithstanding a provision in the articles or in an agreement authorising a director or manager to assign his office, such an assignment will be ineffective unless approved by a special resolution. (Sect. 83.)

Directors: Interest in contracts.—A director, who is interested in a contract or proposed contract with the company, must disclose his interest at a meeting of directors. (Sect. 81.)

Directors: Liability.—By sect. 78, subject to certain limitations, a provision in the articles or in a contract exempting a director or other officer from, or indemnifying him against, any liability for negligence, default, breach of duty or breach of trust is void. This is intended to meet the decision in *Re City Equitable Fire Insurance Co.*, (1925) Ch. 407.

The same section extends sect. 279. As extended, it allows the Court to relieve directors, managers and other officers who have acted honestly and reasonably from liability for negligence, default, breach of duty or breach of trust.

Directors, loans to, and remuneration of.—The accounts laid before every company annually in general meeting must (with some exceptions) show the amount of loans made to a director or officer, and the total amount paid to directors for remuneration. (Sect. 79.)

Directors, number of.—Every public company registered after the commencement of the Act must have at least two directors. (Sect. 28.)

Directors, payment to, for loss of office.—It is not lawful, on a transfer of the company's undertaking or property, for any payment to be made to a director as compensation for loss of office, or as consideration for his retirement, unless particulars have been disclosed to the members and approved by the company. Any payment made without disclosure and approval will be held by the director on trust for the company. (Sect. 82.)

Directors: Register.—A new section is substituted by sect. 31 for sect. 75 of the Act of 1908. The new section incorporates the Companies (Particulars as to Directors) Act, 1917, with some amendments, the most noticeable of which is that the register is to be open to inspection by members without charge, and by other persons on payment of a shilling.

Directors: Remuneration.—Members entitled to at least one-fourth of the total votes of all the members can compel the directors (unless the company decides otherwise) to furnish a statement, certified by the auditors, showing the aggregate amounts received by the directors by way of remuneration or emoluments during each of the last three years. (Sect. 80.) (*And see* DIRECTORS, LOANS TO, AND REMUNERATION OF, *ante*.)

Directors: Undischarged bankrupts.—It is a criminal offence (two years' imprisonment on conviction on indictment, or six months on summary conviction, or/and 500*l*. fine) for an undischarged bankrupt to act as director of, or directly or indirectly

take part in the management of a company (including an unregistered company or a foreign company with a place of business here), unless he has obtained the leave of the Court by which he was adjudged bankrupt. There is a saving for undischarged bankrupt directors acting on the 3rd August, 1928. (Sect. 84.)

Dissolved company.—Sect. 71 makes all property, vested in or held in trust for a company immediately before its dissolution, *bona vacantia*—including leaseholds, but not including property held by the company on trust for any other person. Hitherto, a lease has determined and freeholds have reverted to the grantor. (See *Re Higginson and Dean*, (1899) 1 Q. B. 325; *Hastings Corporation* v. *Letton*, (1908) 1 K. B. 378.)

The file of a company dissolved at least two years previously may be sent to the Record Office. (Sect. 88.)

Dominion companies.—By sect. 11, Orders in Council may be made applying sects. 30, 31, and 32 of the 1908 Act to branch registers kept here by companies incorporated in any part of His Majesty's Dominions or in any protected or mandated territory, the law of which allows such branch registers to be kept here. The sections referred to relate to inspection, closing and rectification of the register.

Dominion registers.—A new sect. 34 takes the place of the original in the Act of 1908, which allows a company to keep a colonial register—now re-christened a "Dominion register." The section is made to apply, not to "a colony," but to "any part of His Majesty's Dominions outside Great Britain, the Channel Islands or the Isle of Man," and it may be extended by Order in Council so as to apply to protected territories, as may also sects. 35 and 36 of the 1908 Act, which contain further provisions as to dominion registers. A dominion register may be kept without express authority under the articles, and there are some other alterations. (Sect. 10.)

Foreign companies.—Sect. 274 of the Act of 1908 is extended by sect. 89, so as to apply to companies incorporated outside Great Britain which, before the 1st April, 1909, established and

still have a place of business in Great Britain, and to all companies incorporated in the Irish Free State or Northern Ireland which have such a place of business at the commencement of this Act. They must file the required particulars within one month after the commencement of this Act. There are other alterations in sect. 274 contained in sects. 89 and 90 of the new Act.

Companies incorporated in Channel Islands or Isle of Man, if they establish a place of business in England, or if they have done so before the Act and still retain it, must forward to or file with the registrar the same documents as if they were registered in England. (Sect. 90.)

Foreign interests.—The Companies (Foreign Interests) Act, 1917, under which articles restricting the rights of aliens could not be altered without the consent of the Board of Trade, is repealed by sect. 116.

Investigation of company's affairs.—Sect. 48 makes some amendments in sects. 109 and 110 of the Act of 1908.

The security which the Board of Trade may require to be given by the applicants for an investigation of a company's affairs by Board of Trade inspectors is limited to 100*l.*

Instead of merely incurring a penalty of 5*l.* for refusing to produce documents to the inspectors or answer their questions, the officers or agents of the company may be reported to the Court by the inspectors, and may be punished as if guilty of contempt of Court.

New provisions are made with regard to the expenses of the investigation.

A new sub-section added to sect. 110 of the 1908 Act enables inspectors appointed by the company to report to the Court for punishment for contempt any officer or agent who refuses to produce documents or answer questions.

Meetings.—Sect. 23 makes several alterations in sect. 67 of the Act of 1908:—

(a) Seven days' notice of meeting will not do for a special resolution—it must be a twenty-one days' notice under sect. 25.

(b) For "five members may call a meeting," the section substitutes the following provision:—"Two or more members hold-

ing not less than one-tenth of the issued share capital, or, if the company has not a share capital, not less than 5 per cent. in number of the members of the company may call a meeting."

(c) The section fixes a quorum—two members personally present in case of a private company, and three in the case of any other company.

(d) Only a member can be elected as chairman.

(e) Instead of "every member shall have one vote," the new section provides that "in the case of a company originally having a share capital, every member shall have one vote in respect of each share or each ten pounds of stock held by him, and in any other case every member shall have one vote."

(f) In cases where it is impracticable to call or conduct a meeting in the proper way, the Court may give directions as to holding the meeting.

[What is said in paragraphs (b), (c), (d) and (e) above is subject to the provisions of the articles.]

Meetings, adjourned.—Sect. 30 reverses the rule illustrated by *Neuschild* v. *British Equitorial Oil Co.*, (1925) Ch. 346, that a resolution passed at an adjourned meeting may be treated as passed at the original meeting. Resolutions passed after the Act at an adjourned meeting are to be treated for all purposes as passed on the date on which they were actually passed and not earlier. This applies to meetings of (a) the company, (b) the holders of any class of shares, (c) the directors, (d) any creditors or contributories.

Meetings, extraordinary.—Sect. 22 makes amendments in sect. 66 of the Act of 1908, which requires directors to convene an extraordinary general meeting on the requisition of a certain proportion of shareholders. Under the new section the requisition can be made by members holding not less than one-tenth of such of the paid-up capital as carries the right of voting at general meetings, or, if the company has no share capital, members representing not less than one-tenth of the total voting rights of all the members having a right to vote at general meetings. Members having no voting rights cannot requisition a meeting.

The new section also entitles the requisitionists to recover from

the company any reasonable expenses incurred by them through the directors' failure duly to convene the meeting, and the company must deduct the money from the fees of the directors who were in default.

Meetings: Representation of other companies.—A new section is substituted by sect. 24 for sect. 68 of the Act of 1908, which allows a company which is a member of another company to authorise a person to represent it at meetings of that other company. The section is extended so as to apply to any corporation, whether a company within the Companies Acts or not, and so as to enable the authorised representative to represent the corporation not only at meetings of the company, but also at meetings of any class of members of the company, and, where the corporation is a creditor, including a debenture holder, at any meeting of creditors.

Meetings, statutory.—The statutory meeting must be held by companies limited by guarantee and having a share capital, as well as by companies limited by shares. But private companies need not hold the meeting. A penalty for default is imposed on a director (but on no one else). (Sect. 21.)

Memorandum: Alteration.—Notwithstanding anything in the memorandum or articles, no member (unless he agrees in writing to be bound by the alteration before or after it is made) will be bound by any alteration in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take up or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability at that date to contribute to the share capital of or otherwise to pay money to the company. (Sect. 3; suggested by *Biddulph and District Agricultural Society, Ltd.*, (1927) A. C. 76. Cp. Industrial and Provident Societies (Amendment) Act, 1928, *post*, p. 121.)

Memorandum: Alteration of objects.—An alteration under sect. 9 of the Act of 1908 may take the form of including among the company's objects a power to sell or dispose of the whole undertaking of the company or a power to amalgamate with another company or body of persons. (Sect. 2.)

Memorandum: Copies.—A member, on payment, can require a copy of any Act of Parliament which alters the memorandum. Also, where any alteration is made in the memorandum, every copy of the memorandum issued after the date of the alteration must be in accordance with the alteration. (Sect. 4.)

Minimum subscription.—Important amendments are made by sect. 35 as regards the minimum subscription. It will no longer be possible for the directors to fix it at, say, seven shares. By a new clause, inserted as sect. 81 (1) (cc), where shares are offered to the public for subscription, the prospectus must state (A) the minimum amount which, in the opinion of the directors, must be raised by the issue of these shares in order to provide the sums (or if any part thereof is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of (i) the purchase price of any property which is to be defrayed in whole or in part out of the proceeds of the issue; (ii) preliminary expenses and underwriting commission; (iii) the repayment of any money borrowed for the foregoing; and (iv) working capital; and (B) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue, and the sources out of which these amounts are to be provided.

Then sect. 85 is altered, so as to make the amount specified in (A) above the minimum subscription on which the directors can proceed to allotment.

Other alterations are that the decisions in *Mears* v. *Western Canada Co.*, (1905) 2 Ch. 353, and *Burton* v. *Bevan*, (1908) 2 Ch. 240, to the effect that cheques must be cleared before allotment, are overruled; that the minimum subscription need not be named in the articles; and that the provisions as to minimum subscription do not apply where no offer is made to the public, sect. 85 (7) being repealed.

Minute books.—The minute books of general meetings held after the Act are to be open to inspection gratis by any member during business hours for at least two hours a day. Any member must be supplied, within seven days after request, with a copy, at a charge of not more than 6*d*. per hundred words. (Sect. 27.)

Mortgages: Registration.—Important alterations are made by sect. 43 in sect. 93 of the 1908 Act:—

(1) The section requires registration of a mortgage or charge (a) on calls made but not paid; (b) on a ship or any share in a ship; (c) on goodwill, on any patent or licence under a patent, on any trade mark or on any copyright or licence under a copyright.

(2) Hitherto, where a company has acquired property subject to an existing mortgage or charge, registration has not been necessary. The section requires registration if the mortgage or charge is of such a kind that it would have had to be registered if created by the company.

(3) Sect. 93 is extended to mortgages or charges on property in England belonging to a company incorporated outside England which has an established place of business in England.

(4) What is said in paragraphs (1) and (2), above, only applies to mortgages or charges created, or property acquired, after the commencement of the Act, but within six months after the commencement of the Act every company must send to the registrar particulars of such mortgages or charges existing at that date. Penalty, 50*l*. a day; but the mortgage or charge is not affected by non-registration.

(5) The period of three months mentioned in sect. 212 of the 1908 Act is altered to six months; so that a floating charge created within six months before winding-up is void except to the amount of cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, with 5 per cent. interest, unless it is proved that the company was solvent immediately after the creation of the charge.

Name of company.—No company can be registered by a name containing the words "Building Society," or (unless it is registering under sect. 20 of the Act of 1908 without the word "Limited") the words "Chamber of Commerce." Nor, except with the consent of the Board of Trade, can the word "Co-operative" be used, or the word "Royal," or "Imperial," or "Municipal," or "Chartered," or any name which might suggest royal patronage or connection with the Government, or a local

authority, or a society or body incorporated by royal charter. (Sect. 1.)

Private companies.—If a private company alters its articles so that they no longer include the provisions required to make it a private company, it will cease to be a private company on the date of the alteration. Within fourteen days after that date it must file with the registrar a prospectus or a statement in the form set out in Part II. of the First Schedule. (Sect. 55.)

Prospectus: Foreign companies.—By sect. 93, no person may issue, circulate or distribute in Great Britain any prospectus offering for subscription shares in or debentures of a foreign company, unless a prospectus containing most of the matters required to be included in a prospectus under sect. 81 of the 1908 Act and some others has been filed. Nor can a form of application for such shares or debentures be issued here, except with a proper prospectus, or except where the form of application is issued in connection with a *bonâ fide* invitation to enter into an underwriting agreement. The provisions of sect. 81 are, with a few modifications, applied to a prospectus within this section, and so is sect. 84, which relates to liability for statements in a prospectus.

An offer of shares or debentures for subscription or sale to any person whose ordinary business is to buy or sell shares or debentures is not an offer to the public for the purposes of this section.

Prospectus issued by issuing houses.—Sect. 32 contains an important extension of the meaning of "prospectus" so as to apply to any document offering for sale to the public any shares or debentures allotted or agreed to be allotted with a view to all or any of them being offered for sale to the public. All enactments and rules of law as to the contents of prospectuses and to liability in respect of statements in and omissions from prospectuses, or otherwise relating to prospectuses, will apply to such a document. [The Act of 1908 only applies to prospectuses issued by or on behalf of a company.]

The document must contain, in addition to the other matters stated in sect. 81 of the 1908 Act, (a) the net amount of consideration received or to be received by the company in respect of

the shares or debentures to which the offer relates, and (b) the place and time at which the contract for allotment may be inspected.

Prospectus, particulars in.—Sects. 33 and 34 make several alterations in sect. 81 of the 1908 Act. *Inter alia*:—

(1) Paragraph (n) is amended so that it is only necessary to state the rights of different classes of shares when shares (not debentures) are being offered; but then the rights of the different classes as to capital and dividends must be stated as well as the rights of voting.

(2) The prospectus must contain a report by the company's auditors as to the profits of the company in respect of each of the three preceding financial years or such smaller number of years as it may have been carrying on business, and the dividends paid.

(3) If any part of the proceeds of the issue of the shares or debentures is to be applied in purchase of any business, the prospectus must give the contents of a report made by named accountants upon the profits of the business for the three preceding financial years, or two years or one year, as the case may be, if the business has not been carried on for three years.

(4) It will not be lawful to issue any form of application for shares or debentures unless the form is issued with a proper prospectus. The prohibition does not apply if the form is issued (a) in connection with a *bonâ fide* invitation to enter into an underwriting agreement, or (b) where there is no offer to the public, or where there is an offer to existing shareholders or debenture holders only.

(5) No liability will be incurred by any director or other person for non-compliance with or contravention of the section in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or if in all the circumstances the Court thinks the non-compliance or contravention ought reasonably to be excused. (Sect. 33.)

(6) "Two years" is substituted for "one year" in sect. 81 (8). Certain particulars, *e.g.*, the contents of the memorandum, need not be stated in prospectuses issued more than two years after the company is entitled to commence business. (Sect. 34.)

Prospectus: Statement in lieu.—Sect. 36 takes the place of sect. 82 of the 1908 Act. A statement in lieu of prospectus, containing the matters set out in the First Schedule to the new Act, must be filed at least three days before the first allotment of shares or debentures by any public company having a share capital which issues no prospectus, or which has issued a prospectus but not proceeded to allot any shares offered to the public.

Receivers and managers.—Some amendments are made in sect. 95 of the Act of 1908, which relates to the filing of accounts of receivers and managers. (Sect. 44.)

By sect. 45, the liquidator, by an application to the Court, can compel a receiver or manager appointed under the powers contained in any instrument to render proper accounts of his receipts and payments, and to pay over to the liquidator the amount properly payable to him.

The section also empowers the Court, on the liquidator's application, to fix the remuneration of such receiver or manager.

Reconstruction and amalgamation.—Sect. 54 contains provisions for facilitating reconstructions and amalgamations. It gives the Court wide powers when application is made under sect. 120 of the Act of 1908 to sanction a compromise or arrangement which has been proposed for the purposes of a reconstruction or amalgamation, and the scheme involves a transfer to another company of the whole or part of the undertaking or property of any company concerned in the scheme.

Register of members.—A company, having more than fifty members, must keep an index—which may be a card index—of the names of the members, unless the register is in such a form as to constitute in itself an index. The index is to be open to inspection in the same way as the register (see sect. 30 (1) of the Act of 1908). (Sect. 5.)

Register of members, copies of.—Some amendments in sect. 30 of the 1908 Act are made by sect. 9. A time limit of ten days is imposed for the sending of a copy of the register to any person requiring it; and the Court can order the copy to be sent.

Registered office.—A company must have its registered office, under sect. 62 of the 1908 Act, as from the day on which it begins to carry on business, or as from the twenty-eighth day after its incorporation, whichever is the earlier; and the notice must be given within twenty-eight days after its incorporation or, in case of a change of office, of the change. (Sect. 20.)

Registrar, production of documents by.—No process for compelling production of any document kept by the registrar of companies may issue from any Court except with that Court's leave. (Sect. 97.)

Resolutions: Special and extraordinary.—Sect. 25 amends sect. 69 of the Act of 1908 in the following respects:—

(1) The confirmatory meeting hitherto required for a special resolution is abolished.

(2) The three-fourths majority required for an extraordinary or special resolution is a three-fourths majority of the members who, being entitled to vote, actually do vote, personally or by proxy.

(3) To be a special resolution, the resolution must be passed at a general meeting, of which not less than twenty-one days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given. But if all members entitled to attend and vote at any such meeting agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

(4) When an extraordinary or special resolution is submitted to be passed, a poll may be demanded by such number of members entitled to vote as may be specified in the articles, but it is not in any case necessary that the demand should be made by more than five members. If the articles contain no provision as to the right to demand a poll, it may be demanded by three members entitled to vote, or by one or two such members holding not less than 15 per cent. of the paid-up share capital.

By sect. 26, the provisions of sect. 70 of the Act of 1908, with regard to forwarding to the registrar, and annexing to the articles, a printed copy of every special or extraordinary resolu-

tion, are extended so as to apply not only to special and extraordinary resolutions, but also to (i) an ordinary resolution to wind up voluntarily, and (ii) certain resolutions which, though not passed as special or extraordinary resolutions, are binding on the company or on a particular class of shareholders because they are agreed to by all.

Returns.—Sect. 52 provides a method of enforcing the duty of a company, receiver or liquidator to make returns, &c. The company, liquidator or receiver may be served with a notice to make the return, &c., and if the notice is not complied with within fourteen days, a member, creditor or the registrar may apply to the Court, which may order the default to be made good, and may order the defaulter to pay the costs.

Scotch company, service on.—Where a Scotch company carries on business in England, the process of any Court in England may be served on the company by leaving it at, or sending it by post to, the principal place of business in England, addressed to the manager or other head officer in England. A copy of the process must be sent by post to the registered office. (Sect. 49.)

Share-hawking.—See *post*, p. 65.

Shares: Discount.—Sect. 37 makes an important innovation. Hitherto, it has not been legal to issue shares at a discount, except when the conditions of sect. 89 were complied with. The new section allows shares of a class already issued to be issued at a discount, provided that (a) the issue is authorised by a resolution passed at a general meeting and sanctioned by the Court; (b) the resolution specifies the maximum rate of discount; (c) not less than a year has, at the date of issue, elapsed since the company was entitled to commence business; (d) the shares are issued within a month after the Court's sanction or such extended time as the Court may allow.

Particulars of the discount must be stated in the annual return, every prospectus relating to the issue of the shares, and every subsequent balance sheet.

Shares: Dissentient shareholders.—Sect. 50 provides a method whereby, if a scheme or contract involving the transfer of shares in a company to another company is approved by the holders of not less than nine-tenths in value of the shares affected, the transferee company may, subject to an appeal to the Court, acquire the shares of dissentient shareholders.

Shares: Loans by company for purchase.—Sect. 16 prohibits the giving by a company of any financial assistance for the purpose of a purchase of its shares by any person. But this does not prohibit (i) a loan in the ordinary course of business where lending is part of the ordinary business of the company, nor (ii) the provision by a company of money for the purchase by trustees of fully-paid shares under a scheme for the benefit of employees, nor (iii) the making of loans to *bonâ fide* employees (not including directors) to enable them to buy fully-paid shares to be held beneficially by them.

Shares, redeemable preference.—Sect. 18 allows a company limited by shares, if so authorised by its articles, to issue redeemable preference shares. But they can only be redeemed if they are fully paid, and only out of profits available for dividend or out of the proceeds of a fresh issue of shares made for the purpose of redemption. When redeemed out of profits, a sum equal to the amount applied in redemption must be transferred out of profits to a reserve fund called "the capital redemption reserve fund," and the provisions of the Act as to reduction of capital will apply to the fund as if it were paid-up share capital.

Shares: Transfers—Registration.—Notwithstanding anything in its articles, a company must not register a transfer of its shares or debentures unless a proper instrument of transfer has been delivered. But this does not prevent registration of a person to whom shares or debentures have been transmitted by operation of law.

The company must accept, as evidence of probate or administration, any document which is by law sufficient evidence of the grant having been made. (Sect. 8.)

Shares: Variation of rights.—Sect. 17 gives further protection to the holders of shares with special rights attached to them

against being deprived of their rights without their consent. It is aimed at cases in which, though the majority of, *e.g.* the preference shareholders agree to their rights being varied or abrogated, there is a substantial dissenting minority. A minority of at least 15 per cent. is given the right to apply to the Court, which may either disallow or confirm the variation. The section applies whenever the variation is being made under an express provision in the memorandum or articles authorising the variation, with the consent of, or a resolution passed by, a specified proportion of the shareholders of the class affected.

Underwriting commission.—The commission paid under sect. 89 of the 1908 Act must not exceed 10 per cent. of the issue price; and the number of shares which persons have agreed for a commission to subscribe for absolutely must be disclosed in the manner provided in sect. 89. Where there is no prospectus or statement in lieu of prospectus, the statement required by the section to be filed must be filed before the payment of the commission. (Sect. 38.)

Winding-up: Commencement.—Where, before a petition for compulsory winding-up is presented, a resolution has been passed for voluntary winding-up, the winding-up commences at the time of the passing of the resolution. All proceedings taken in the voluntary winding-up will be deemed to have been validly taken, unless the Court, on proof of fraud or mistake, otherwise directs. (Sect. 57.)

Winding-up: Court.—Any company registered in England may be wound up by the High Court, while the Palatine Courts, a County Court (unless excluded from jurisdiction by the Lord Chancellor), if the capital paid up or credited as paid up does not exceed 10,000*l.*, and the Stannaries Court have concurrent jurisdiction if the registered office is situate within their respective jurisdictions. (Sect. 56.)

Winding-up: Disclaimer.—Hitherto, unlike a trustee in bankruptcy, a liquidator has had no right of disclaimer. Sect. 68 gives him power, with the leave of the Court, to disclaim land of any tenure burdened with onerous covenants, shares or stock in

companies, unprofitable contracts, or any other property unsaleable or not readily saleable.

Winding-up: Examination.—The Court may summon before it any person deemed capable of giving information as to the promotion or formation of the company. (Sect. 62.)

When a person, publicly examined under sect. 175 of the Act of 1908, applies for a declaration under sub-sect. (6) that he is exculpated from any charges brought against him, the official receiver must appear and call the Court's attention to any matters which appear to him to be relevant, and he may himself give evidence and call witnesses. (Sect. 63.)

Winding-up: Execution.—To retain against the liquidator the benefit of an execution, a creditor must have completed the execution or attachment before the commencement of the winding-up, or before the date on which he had notice of a meeting having been called, at which there is to be proposed a resolution, under sect. 182 of the Act of 1908, to wind up the company voluntarily. (Sect. 69, which is modelled on sect. 40 of the Bankruptcy Act, 1914.)

If the sheriff, before sale of the goods or completion of the execution by receipt or recovery of the full amount of the levy, receives notice of the appointment of a provisional liquidator or a winding-up order or resolution to wind up voluntarily, he must, on request, deliver the goods and any money received to the liquidator. And if the execution is in respect of a judgment for a sum exceeding 20*l.*, the sheriff cannot hand over the proceeds of sale or money paid to avoid a sale to the execution creditor for fourteen days. (Sect. 70, which follows the lines of sect. 41 of the Bankruptcy Act, 1914.)

Winding-up: Foreign company.—A company incorporated outside Great Britain, which has been carrying on business in Great Britain, but ceases to do so, may be wound up as an unregistered company under Part VIII. of the Act of 1908, although it has been dissolved or otherwise ceased to exist under the law of its own country. (Sect. 91.)

Winding-up: Fraud.—Where the official receiver has made a report of fraud against any person, the Court may prohibit that

person from taking part in the management of any company for five years. (Sect. 76.)

Winding-up: Liquidator.—No body corporate may act as liquidator, auditor or receiver of the property of a company, unless acting under an appointment made before the 3rd August, 1928. (Sect. 85.)

Winding-up: Liquidator—Vesting of property.—When a company is being wound up by the Court, the Court, on the liquidator's application, may order any property of the company to vest in the liquidator by his official name. (Sect. 61.)

Winding-up, notification of.—When a company is being wound up, or where a receiver or manager has been appointed, invoices, orders for goods or business letters issued by or on behalf of the company or liquidator or receiver or manager in which the company's name appears must state that the company is in liquidation or that a receiver or manager has been appointed. (Sect. 87.)

Winding-up: Offences.—Sects. 72—74 make various acts, committed by officers of a company, criminal offences. The sections are modelled on sects. 154, 156 and 158 of the Bankruptcy Act, 1914.

"Officer" includes any person occupying the position of a director or in accordance with whose directions or instructions the directors of a company have been accustomed to act, but not professional advisers. (See sect. 94.)

Fraudulent trading is dealt with by sect. 75. Where it appears in a winding-up that the company's business has been carried on with intent to defraud creditors or for any fraudulent purpose, the Court may declare that any director who was knowingly a party to the fraud shall be personally responsible, without any limit of liability, for the liabilities of the company, and may charge the liability on any interest he has in the company's assets. He is also made criminally liable, and the Court may prohibit him from taking part in the management of any company for five years.

Winding-up: Official Receiver.—For the more convenient and

economical conduct of a winding-up by the Court, the Court may order some other officer than the official receiver to act as official receiver. (Sect. 59.)

Winding-up: Prosecutions.—Provision is made by sect. 77 to secure that directors and others who have committed criminal offences shall be prosecuted. In a winding-up by or under the supervision of the Court, the Court may direct the liquidator to prosecute or to refer the matter to the Director of Public Prosecutions. In a voluntary winding-up, it is the liquidator's duty to report the matter to the Director of Public Prosecutions, and the Court may direct him to do his duty. This does not preclude a private prosecution. (Sect. 95.)

Where proceedings are instituted by the Director of Public Prosecutions, no person who has acted as solicitor for the defendant can be required to disclose privileged communications. (Sect. 96.)

Winding-up: Stamp duty.—Where a company is being wound up by the Court, or an insolvent company is being wound up voluntarily, there is the same exemption from stamp duty as under sect. 148 of the Bankruptcy Act, 1914. (Sect. 98.)

Winding-up: Statement of affairs.—Sect. 60 amends sect. 147 of the Act of 1908. A statement of affairs must be submitted to the official receiver when a provisional liquidator has been appointed. The Court may dispense with the requirements of sect. 147. An employee of the company, or an officer or employee of a company who is an officer of the company in liquidation, may be required to submit the statement.

Winding-up: Stay.—The liquidator and official receiver have the same right as a creditor or contributory to apply to the Court for a stay of winding-up proceedings. (Sect. 58.)

Winding-up, voluntary: Advertisement.—Notice of a resolution to wind up voluntarily must be advertised in the *Gazette* within seven days, and such advertisement is required when the resolution is an ordinary resolution, as well as when it is special or extraordinary. (Sect. 64.)

Winding-up, voluntary: Dissolution meeting.—The liquidator must, with his return to the registrar of the holding of the final dissolution meeting, send a copy of his account. (Sect. 66.)

Winding-up, voluntary: Insolvent company.—Important new provisions are made by sect. 67 where a company being wound up voluntarily is known or suspected to be insolvent. The object is to give the creditors greater control. The section applies to every voluntary winding-up, unless, at a meeting of directors held before the notices of the meeting at which the resolution for winding-up is to be proposed have been sent out, the directors, or a majority of them, have made and filed with the registrar a statutory declaration that, after full inquiry, they have formed the opinion that the company will be able to pay its debts in full within twelve months from the commencement of the liquidation. The section is too lengthy to set out. Rules may be made to carry its objects into effect.

Winding-up, voluntary: Sale to company.—Sect. 192 of the 1908 Act, which gives a liquidator power to accept shares, &c. as consideration for the sale of the undertaking to another company, is made to apply to a sale to any company, whether a company within the meaning of the Act or not. (Sect. 65.)

COMPANY LAW.

Act of 1928.—See *ante*, p. 38.

County Court jurisdiction.—Where a company is being wound up in a County Court, the judge has jurisdiction to declare that debentures are invalid as a fraudulent preference under sect. 210 or invalid under sect. 212 of the Companies (Consolidation) Act, 1908. He has the same jurisdiction as the High Court by virtue of sect. 131 (6). (*Re F. and E. Stanton, Ltd.*, *Hogg* v. *Maule*, Div. Ct.)

Cumulative dividend.—The ordinary shares of a company were entitled to a limited cumulative dividend of 5 per cent.; surplus profits were to be devoted to other purposes. Ordinary shares were issued at various dates, but the dividends fell heavily into arrears. In 1927 there were profits available to pay some

but not all arrears: this was directed to be divided among the shareholders in proportion to the amounts of arrears on the shares held by them respectively. (*First Garden City, Ltd.* v. *Bonham-Carter*, Tomlin, J.)

Debenture: Floating charge; subsequent specific charge.—A company created debentures secured by a floating charge. The debentures provided that the company should not create any mortgage or charge in priority to the debentures. The company entered into a contract to build certain houses. The contract provided for the retention by the building owner of 10 per cent. of the value of the work executed until the final adjustment of accounts. The company made a written assignment of the retention moneys by way of security, and written notice of the assignment was given to the building owner. A receiver was appointed for the debenture holders. The assignee was entitled to the retention moneys as against the receiver. The assignment was a good legal assignment under sect. 136 of the Law of Property Act, 1925, and it was effective against the debenture holders, for the assignee had no actual notice of the restriction contained in the debentures, and registration of the debentures did not affect him with constructive notice. (*Earle, Ltd.* v. *Hemsworth R. D. C.*, Wright, J.)

Debenture: Floating charge—Validity.—Sums paid to a limited company before the issue of debentures, but in consideration of debentures to be issued and in anticipation of debentures being issued by the company in consideration of its promise to that effect, are to be treated as paid "at the time of" the creation of the floating charge subsequently executed securing debentures within the meaning of the Companies (Consolidation) Act, 1908, s. 212, which invalidates a floating charge given within three months prior to the winding-up by a company insolvent at the time, except to the extent of cash paid at the time of or subsequently to the creation of the charge. (*Re F. and E. Stanton, Ltd.*, Maugham, J.)

Debenture: Preferential creditors.—Where a receiver has been appointed by the holders of a debenture which gives a charge on all the assets of a company, the charge being a fixed

charge on some of the assets and a floating charge on the rest, the preferential creditors are entitled to priority of payment only out of the assets subject to the floating charge and not out of those subject to the fixed charge. So held on the construction of sect. 107 of the Companies (Consolidation) Act, 1908. [This is the section applicable where the company is not being wound up. The position is the same under sect. 209 where the company is being wound up.] (*Re Lewis Merthyr Consolidated Collieries, Ltd., Lloyds Bank* v. *The Company,* Tomlin, J.)

Debenture: Receiver, action by.—A receiver appointed by a debenture holder can bring an action in the name of the company without its consent if the debenture provides that "the receiver shall be the agent of the company and shall have power to take possession and get in the property hereby charged." (*Wheeler & Co., Ltd.* v. *Warren,* C. A.)

Debenture: Redemption price.—A scheme which provided for the compromise of the rights of a debenture holder by changing the terms of debentures to make them redeemable at 80 per cent. (which was above the market price) was held to be valid in *Meade-King* v. *Usher's Wiltshire Brewery, Ltd.* (Eve, J.).

Debenture: Sect. 212.—A company, when it was insolvent, gave a debenture secured by a floating charge in respect of an existing debt. The company sold its business, and the debenture was paid off out of the sale proceeds. The company was wound up on a petition presented within three months after the issue of the debenture. The liquidator was unable to recover the money from the debenture holder under sect. 212 of the Companies (Consolidation) Act, 1908. The effect of the section is merely to avoid the charge, not the debenture. (The question whether the payment could be recovered as a fraudulent preference under sect. 210 was not in issue.) (*Re Parkes' Garage (Swadlincote), Ltd.*, Div. Ct.)

Directors: Overseas director.—A company was governed by Table A. with modifications. One of its articles provided that the directors might provide, through local boards, for the management of the affairs of the company abroad, and might appoint

any persons to be members of such local boards and might fix their remuneration. It was held that this article did not allow the directors to appoint one of their own number as overseas director at a salary. (*Kerr* v. *Marine Products, Ltd.*, Finlay, J.)

Directors: Unauthorised acts.—For the effect of an agreement in fraud of the company made by a director and confirmed by the secretary of the company, and a discussion of the ostensible authority of directors and estoppel, see *Houghton & Co.* v. *Nothard, Lowe and Wills, Ltd.* (H. L., discussed 46 L. N. 276).

Dissolution: Reopening—Practice.—Where a limited company has been dissolved, and on the discovery of fresh assets a motion is made under the Companies (Consolidation) Act, 1908, s. 223, for a declaration that the dissolution is void, notice ought to be given to the Treasury Solicitor. The reason is that on dissolution undistributed assets pass to the Crown as *bona vacantia*. The same practice should be adopted as to the removal of defunct companies under sect. 242 in cases where undistributed assets exist. (*Re Home and Colonial Insurance Co., Ltd.*, Maugham, J.)

Liquidation: Insurance money.—A. obtained judgment against a company for damages for personal injuries and costs, and the company went into liquidation, and an insurance company with which the company was insured paid the amount of the damages and costs to the liquidator; A. had no claim to the amount so paid. He had only a right of proof in the liquidation. The sum paid to the liquidator was not due as a result of A.'s action, and therefore his money; the real reason of its existence was that the company had paid premiums to the insurance company so that in certain events money should be paid to the company. There was no privity between A. and the insurance company. (*Re Harington Motor Co., Ltd.*, C. A.)

Misfeasance summons.—Sect. 215 of the Companies (Consolidation) Act, 1908, is limited to cases where there has been something in the nature of a breach of duty by an officer of the company as such, which has caused pecuniary loss to the company. Breach of duty would include a misfeasance or a breach of trust

in the stricter sense, and the section would apply to a true case of misapplication of money or property of the company, or a case where there has been retention of money or property which the officer was bound to pay or return to the company. An order was refused under the section, where the liquidator was claiming salary overpaid to the secretary without any wrongful conduct on his part. Such a claim must be made in an action in which there will be proper pleadings, and in which a set-off can be set up—which is not possible in proceedings under the section. (*Re Etic, Ltd.*, Maugham, J.)

Notice of meeting.—Table A. does not require notice of meeting to be given to a shareholder who has no registered address and has not given to the company any address within the United Kingdom. (Art. 114.) Art. 111 is not inconsistent with this. (*Dickson* v. *Halesowen Steel Co.*, Tomlin, J.)

Preference shares: Winding-up.—A memorandum provided that certain preference shares should confer "the right" to a fixed cumulative dividend and "shall rank" both as regards dividends and capital in priority to the ordinary shares. The articles spoke in similar terms of "the rights" of the preference shareholders. These delimitations were exhaustive, and the preference shareholders had no further rights in surplus assets on winding up. (*Collaroy Co., Ltd.* v. *Giffard*, Astbury, J.)

Prospectus: What is.—A company requiring fresh capital, its directors drew up a document stating that it was proposed to issue certain shares, and an application form for shares was annexed to the document. Another document was signed by the managing director addressed to another director, and marked "strictly private and confidential." In this there was a full statement of assets and liabilities, and of the purposes for which the new capital was required. The document concluded with the words, "I shall be very happy to discuss this proposition in all its details with anyone who is really interested." To it was annexed an application for shares. These documents were sent to a solicitor with a request that he should find some client willing to provide the money, which he did. The jury found that these documents were an offer of shares by the company to the public,

and the Court of Appeal held that they had been issued to the public, and therefore should have contained the statements required by sect. 81 of the Companies (Consolidation) Act, 1908. The House of Lords, however, held that there had been no "issue" and the section was not applicable. (*Lynde* v. *Nash*.)

Rule in Royal British Bank v. Turquand.—This rule does not protect a person who has been put on enquiry if he is guilty of negligence in not investigating the position. Thus where bankers were put on enquiry with regard to the appointment of a new director they were not entitled to assume that notice of appointment of an additional director was a valid notice, and that the director was duly appointed. (*Liggett (Liverpool), Ltd.* v. *Barclays Bank*, Wright, J.)

Share-hawking.—Sect. 92 of the Companies Act, 1928, which is in force, makes it unlawful for any person to go from house to house (not including an office used for business purposes) offering shares, debentures or "units" (*i.e.*, any right or interest in a share) for subscription or purchase to the public or any member of the public.

The same section makes it unlawful to make a written offer to any member of the public (unless it is part of his ordinary business to buy or sell shares) of any shares for purchase unless the offer is accompanied by a written statement containing certain particulars. But this does not apply (a) where the shares are quoted, or permitted to be dealt with, on any recognised stock exchange in Great Britain, and the offer so states and specifies the stock exchange; or (b) where the shares have been allotted, or agreed to be allotted, with a view to their being offered for sale to the public (*see sect.* 32 *under* PROSPECTUS, *ante*, p. 50); or (c) where the offer is made only to persons with whom the offeror has been in the habit of doing regular business in the purchase or sale of shares.

Acting in contravention of the section is a criminal offence, and the convicting Court may declare any contract made as a result of the offer void, and may order the repayment of any money paid.

Stamp duty on reconstruction or amalgamation.—Sect. 55 (1) of the Finance Act, 1927, provided for relief from

capital and transfer stamp duty in the case of the reconstruction of a company or the amalgamation of companies under certain conditions. It has been amended by sect. 31 of the Finance Act, 1928, as follows:—

(1) The following shall be substituted for paragraph (A) (ii):—"(ii) the amount to be credited as paid up on the shares to be issued as such consideration as aforesaid and on the shares, if any, to be issued to creditors of the existing company in consideration of the release of debts (whether secured or unsecured) due or accruing due to them from the existing company or of the assignment of such debts to the transferee company.

(2) In paragraph (B) there shall be inserted after the words "transfer of the undertaking or shares" the words "or on any instrument made for the purposes of or in connection with the assignment to the transferee company of any debts, secured or unsecured, of the existing company."

(3) At the end there shall be inserted the following additional proviso:—"; and (c) the foregoing provision with respect to the release and assignment of debts of the existing company shall not, except in the case of debts due to banks or to trade creditors, apply to debts which were incurred less than two years before the proper time for making a claim for exemption under this section."

Syndicate of more than twenty persons.—A syndicate of more than twenty persons was formed to buy shares in a company, pooling those shares and using the voting powers to promote the amalgamation of that company with another company. The Court, in an action against the members of the syndicate, refused to strike out the statement of claim on the ground that the syndicate was an illegal association. It was not clear that the association was formed for the purpose of carrying on business within the meaning of the Companies (Consolidation) Act, 1908, s. 1, and the action ought to be allowed to proceed to trial. (*Dominion Iron and Steel Co., Ltd.* v. *Baron Invernairn and Others*, Astbury, J.)

Winding-up: Distress.—A colliery company was in voluntary liquidation. It had issued debentures secured by a floating charge. It owed many preferential debts, including large claims

under the Workmen's Compensation Act, which would more than exhaust the assets. Its lessor distrained and the liquidator applied to the Court to restrain the distress. The Court restrained the distress. In view of the preferential debts which had priority over the floating charge, the Court could not say that the assets were practically the property of the debenture holders, and for that reason refuse to restrain the distress. (*Re South Rhondda Colliery Co.* (1898), *Ltd.*, Romer, J.)

Winding-up fees.—See the Companies (Board of Trade) Fees Order, 1927. (S. R. & O. 1927, No. 7/L. 1, price 1*d.*)

Winding-up: Liquidator—Whether a trustee.—A voluntary liquidator of a company is not protected by sect. 30 of the Trustee Act, 1925. In some respects he is a trustee, but he is more correctly described as the agent of the company. (*Knowles* v. *Scott,* (1891) 1 Ch. 717, at p. 723.) Therefore, if by mistake he pays away money of the company to persons not entitled, he must refund, even though the mistake was made honestly. (*Re Windsor Steam Coal Co.* (1901), *Ltd.*, Maugham, J.) This case was affirmed on appeal on the ground that the liquidator had acted negligently. The question whether he is within the Trustee Act was not decided.

CONTRACT.

Actress: Damages for breach.—If an actress is engaged for a particular part in a theatrical performance, the employer agreeing to advertise her prominently, and the employer subsequently breaks the contract and refuses to allow her to play the part, she can recover damages for loss of reputation. (*Marbe* v. *George Edwardes* (*Daly's Theatre*), *Ltd.*, C. A.)

Construction: Exclusion of negligence.—A notice that "all cargoes on vessels while in the dock are at the sole risk of owners or persons bringing them into the dock" is sufficiently clear to exclude liability for damage caused by negligence, as it is difficult for the words to apply to anything other than negligence. (*Forbes, Abbott and Lennard, Ltd.* v. *G. W. R.*, C. A.)

Construction: Indemnity clause.—Under a contract with a railway company contractors obtained permission to use a portable gangway on the company's premises, the contractors agreeing to indemnify the railway against all claims and demands or liability whatsoever to person or property arising out of or in connection with the said gangway. This indemnity clause did not prevent a claim being made by the contractors against the railway company for damage done to the gangway through the negligence of the company's servants. (*Great Western Railway* v. *James Durnford & Son, Ltd.*, H. L.)

Damages: Plaintiff's duty.—In an action for damages (for breach of contract of sale in this case) the plaintiff's duty to minimise his loss is fulfilled if he does all that is reasonable in the facts of the case, the onus of showing a breach of that duty being on the defendant. (*J. Finlay & Co., Ltd.* v. *Kwik Hoo Tong Handel Maatschappij*, Wright, J.)

Delivery not in manner specified.—The plaintiff entrusted jewellers with articles of jewellery for repair, arranging to call therefor on a certain day. The jewellers, ignoring this arrangement, delivered the goods to the plaintiff's address, where the plaintiff's husband received and signed for them, placing them on the hall table, after which the articles disappeared, there being no evidence to show how. The jewellers were held liable to the plaintiff. Their breach of contract in not making delivery to the plaintiff personally was the cause of the loss, and the measure of damages was the value of the goods lost. (*Booth* v. *Welby*, C. A.)

Frustration.—A charter of a ship for twelve months from a date between May 20th and June 20th, 1926, for successive voyages carrying coal from South Wales, was held to be discharged by the coal strike, which prevented the export of coal from South Wales' ports for over half a year. There was a frustration discharging the contract. It was agreed that the coal strike was not unforeseen and that the charter itself contained strike provisions. But those provisions contemplated local interruption of work, and the extent and duration of the

strike which actually occurred was neither foreseen nor provided for by the contract. (*The "Penelope,"* Lord Merrivale, P.)

Memorandum to satisfy Sale of Goods Act, 1893, s. 4.—In an action by a firm against the sellers of goods of 10*l.* and more in value for damages for breach of contract, the defendant pleaded in detail facts showing a contract not with the plaintiff firm, but with a limited company into which that firm had been converted. The action was then reconstituted, and pleadings amended by the firm's name as plaintiffs being struck out and the name of the company substituted. The defence originally delivered pleading the contract (and signed by counsel) was a sufficient memorandum to satisfy sect. 4 of the Sale of Goods Act, 1893, although the memorandum must for that purpose be in existence at the time of the commencement of proceedings. (*Lucas* v. *Dixon,* 22 Q. B. D. 357.) Where there is an amendment of pleadings involving an entirely new departure as to parties, this must, for the purpose under discussion, be treated as the commencement of a new action. *Grindell* v. *Bass,* (1920) 2 Ch. 487, supported this view. (*Farr, Smith & Co., Ltd.* v. *Messers, Ltd.*, Wright, J.)

Personal services: Theatrical contract.—A contract provided for the appearance of the plaintiff and a theatrical company; the plaintiff was to be the leading actor. It was held that despite a clause in the contract providing for a deputy in the event of a principal's illness, the defendants were not entitled to rescind when the plaintiff became too ill to appear before the play was to begin. His appearance was not the essence of the contract on its true construction. (*Terry* v. *Variety Theatres Controlling Co., Ltd.*, C. A.)

Res judicata.—A plaintiff having successfully sued in the County Court for damages "for breach of contract to complete in a good and workmanlike manner," subsequently brought another action in identical terms, but adding that the contract was to build "with proper materials" and giving different particulars. The defendant successfully pleaded *res judicata.* (*Conquer* v. *Boot,* Div. Ct.)

Termination.—An agreement for public lighting was entered into between a gas company and an urban district council, but

the contract did not in terms give either party power to determine it. It was held that the contract was commercial in character, and its nature introduced an implication that either party could terminate it by notice. (*Crediton Gas Co.* v. *Crediton District Council*, C. A.)

COOKED MEATS.

Importation.—The expression "cooked or preserved meats" contained in Article 1 (a) of the Importation of Carcases (Prohibition) Order of 1926, means meats which have been subjected to a process of cooking throughout their whole substance so as to render it unnecessary for them to be further cooked before being used for human consumption. (The Importation of Carcases (Prohibition) (Amendment) Order, 1928, S. R. & O. 1928. No. 7, price 1*d*.)

COPYHOLDS.

Enfranchised: Conveyance.—For the form of certificate to be endorsed, see the Enfranchised Land (Certificate of Endorsement) Regulations, 1925.

Manorial documents.—As to the keeping of Court Rolls, &c., see sect. 144A of the Law of Property Act, 1922, and the Manorial Documents Rules, 1926.

Manorial incidents: Extinguishment.—The rules made under the Law of Property Acts, 1922 and 1924, are the Manorial Incidents (Extinguishment) Rules, 1926. (S. R. & O. 1925, No. 810, price 7*d*.)

Solicitors' remuneration.—The remuneration of solicitors in respect of the extinguishment of manorial incidents is prescribed by the Solicitors' Remuneration (Manorial Incidents) Order, 1926. ("Law Notes," September, 1926, p. 268.)

Stewards' fees.—For the fees chargeable by a steward of the manor in respect of enfranchised land, see the Enfranchised Land (Steward's Fees) Regulations, 1926. (S. R. & O. 1926, No. 3, price 2*d*.)

COPYRIGHT.

Advertisement.—When an advertisement agent prepares an advertisement on instructions and information given to him by an advertiser, the Court will (in the absence of evidence to the contrary) draw an inference that it was the intention of the parties that the copyright should belong to the advertiser. (*Harrold Drabble, Ltd.* v. *Hycolite Manufacturing Co.*, Astbury, J.)

Biographical compilation.—Where the compiler of a biographical book of reference receives from the biographees information to be used as material from which the book may be compiled, the biographees are not the "authors" of the paragraphs containing the information within the meaning of sect. 5 of the Copyright Act, 1911. (*Black, Ltd.* v. *Claude Stacey, Ltd.*, Tomlin, J.)

Broadcasting.—Broadcasting an opera is a performance in public so as to be an infringement of copyright in the opera. (*Messager* v. *British Broadcasting Co., Ltd.*, McCardie, J.) This decision was reversed by C. A. and H. L. on other grounds, viz., that an agreement whereby the composer and authors of an opera granted to G. E. the sole and exclusive right of performing the opera, amounted to an out-and-out assignment of the right of representation, including the right to broadcast the opera.

Finland.—See the Berne Copyright Convention (Finland) Order. (S. R. & O. 1928, No. 388, price 1*d.*)

Mechanical instruments: Royalty.—The Board of Trade by Provisional Order (later confirmed by a *private* Act of Parliament (18 & 19 Geo. 5, c. lii.), (1) increased the royalty under sect. 19 (3) of the Copyright Act, 1911, from 5 to $6\frac{1}{4}$ per cent., no royalty to be less than three-farthings, and fractions of a farthing to count as farthings; and (2) substituted $3\frac{1}{8}$ per cent. for $2\frac{1}{2}$ per cent. payable under sect. 19, sub-sect. (7), para. (b), in the case of musical works published before the commencement of the Act of 1911.

Records.—The Dramatic and Musical Performers' Protection Act, 1925, makes it a criminal offence to make, sell, or use in public unauthorised records.

Slogan.—A "slogan" used for advertisement purposes can be an "original literary work" so as to be the subject of copyright. Thus an electric-therapist claimed copyright in the phrase, "Youthful appearance is a social necessity, not a luxury." It was held by Humphreys, J., that the phrase, which "was an arresting one, and obviously untrue," was an original production of the plaintiff and the subject of copyright. On appeal this decision was reversed. New evidence admitted in the Court of Appeal showed that the phrase, "Beauty is a modern necessity," had been used before by another advertiser. On this evidence the Court of Appeal held that the plaintiff's slogan was not "original." The Court also held that, although copyright may subsist in an advertisement, the matter in which copyright was claimed in this case was too small for the Court to interfere. *De minimis non curat lex.* (*Sinanide* v. *La Maison Kosmeo*, Humphreys, J.; C. A.)

CORONERS.

Act.—Important amendments were made—especially as to the qualification, appointment and resignation of coroners, and as to the holding of inquests—by the Coroners (Amendment) Act, 1926.

Inquest.—If a coroner goes into the jury room after the jury has retired, the Court will quash the inquisition, even though it is only to answer questions asked of him by the jury in the discharge of their duty. The irregularity is fatal. (*Ex parte Anderson, R.* v. *Wood*, Div. Ct.)

COTTON.

The Cotton Industry Act, 1928, continues in force the Cotton Industry Act, 1923, ss. 1—3, for a period of five years from the date when they would otherwise expire, subject to the following amendment of sect. 2 varying the rate of contribution by cotton spinners to the funds of the Empire Cotton Growing Corporation:—For the words "a contribution at the rate of sixpence for every five hundred pounds gross weight or portion thereof of the cotton so purchased" there shall be substituted the words, "a contribution at the rate of threepence for every five hundred

pounds gross weight or portion thereof of the cotton so purchased, or such less rate as the Corporation may, with the approval of the Board of Trade, determine in respect of any year."

COUNTY COURTS.

Admiralty jurisdiction.—By Order in Council of the 7th of May, 1928, the County Courts held at Torquay and Weymouth have Admiralty jurisdiction, and (except for then pending actions) the County Courts held at Totnes and Dorchester ceased to have Admiralty jurisdiction. For Admiralty purposes the districts of Axminster, Exeter and Honiton are the district of the County Court of Exeter; the districts of Kingsbridge, Plymouth and Tavistock are the district of the County Court of Plymouth; the districts of Newton Abbot, Torquay and Totnes are the district of the County Court of Torquay; and the districts of Bridport and Weymouth are the district of the County Court of Weymouth.

Bankruptcy and company jurisdiction.—By order of the Lord Chancellor the Court at Southend ceased to be excluded from jurisdiction in bankruptcy and under the Companies (Consolidation) Act, 1908, and the district of the Court ceased to be attached to that at Chelmsford. For the purpose of jurisdiction in these matters the Court held at Grays Thorrock was detached from Chelmsford and attached to Southend. (S. R. & O. 1928, No. 34/L. 5, price 1*d*.)

The County Court of Devonshire held at Torquay (*see* DISTRICTS, *infra*) is excluded from having jurisdiction in bankruptcy and in proceedings under the Companies (Consolidation) Act, 1908, and for the purpose of that jurisdiction is attached to the County Court of Devonshire held at Exeter, by order of the Lord Chancellor. (The County Courts Bankruptcy and Companies Jurisdiction (Torquay) Order, 1928. S. R. & O. 1928, No. 258/L. 13, price 1*d*.)

Districts.—The Lord Chancellor has ordered that the County Court of Devonshire held at Newton Abbot and Torquay is to be held by the name of the County Court of Devonshire held at Newton Abbot, and that the parishes of Torquay, Cockington and Stokeinteignhead should be detached from the Court held at

Newton Abbot and constituted a separate district by the name of the County Court of Devonshire held at Torquay, and that a Court should be held in that district by the name of the County Court of Devonshire held at Torquay. The County Court of Devonshire held at Totnes and Paignton ceased to be held at Paignton and is held at Totnes, by the name of the County Court of Devonshire held at Totnes and the parishes of Churston Ferrers, Kingswear, Marldon, Stoke Gabriel, Dartmouth, Brixham and Paignton were detached from the district of Totnes and transferred to the district of Torquay. (The County Court Districts (Torquay and District) Order, 1928, dated 29th February, 1928. S. R. & O. 1928, No. 140/L. 7, price 1*d.*)

The County Court held at Wareham (Dorset) ceased to be held at Wareham and is held at Swanage, and the Court held at Alton (Hampshire) was discontinued and the parishes of Medsted and Wield were transferred to the district of Winchester (Hampshire), the parishes of Bentworth and Lasham to the district of Basingstoke (Hampshire), and all other parishes formerly in the district of Alton to the district of Farnham and Aldershot (Surrey). (S. R. & O. 1928, No. 611/L. 21, price 1*d.*)

The County Court of Northamptonshire held at Northampton and Towcester ceased to be held at Towcester as from 1st January, 1929, and is now held at Northampton. (S. R. & O. 1928, No. 873/L. 28, price 1*d.*)

Execution.—Sect. 17 of the Administration of Justice Act, 1928, makes a slight amendment as to the custody of goods taken in execution in the County Court by inserting after the words "put in possession by the bailiff" in sect. 154 of the County Courts Act, 1888, the words "or may be safeguarded in such other manner as the high bailiff directs."

In Rule 7 of Ord. XXV. after the word "order" the following words have been inserted:—"and the applicant satisfies the Registrar that such amended description is properly applicable to the person against whom judgment has been obtained." (County Court (No. 1) Rules, 1928, r. 8.)

Amendments have also been made to Ord. XXV. r. 23A, and new Rules substituted for Rules 23B and 24C of that Order by the

County Court (No. 2) Rules, 1928. (S. R. & O. 1928, No. 506/L. 18, price 1*d.*)

Extended jurisdiction.—The Schedule to the County Courts Order in Council, 1924, was amended as follows:—In Circuit 19, Matlock and Wirksworth were removed from the third column of the said Schedule by the County Courts (Extended Jurisdiction) Order in Council, 1928. The effect of this is that the jurisdiction of the above-named Courts to try actions is not restricted to 50*l.*

Fees.—See the County Court Fees Order, 1925, S. R. & O. 1925, No. 1234/L. 39, price 6*d.*, as amended by the Amendment Orders of 1925, 1926, 1927, and 1928; S. R. & O. 1925, No. 817/L. 17; S. R. & O. 1926, No. 1626/L. 46; 1927, No. 327/L. 12; and 1928, No. 632/L. 23, price 1*d.* each.

The County Court Fees (Amendment) Order, 1928 (S. R. & O. 1928, No. 632/L. 23, price 1*d.*) has inserted, after para. 1 of the existing Order, a new paragraph to stand as para. 1A. This provides that where a party proceeds in the County Court under the Poor Persons Rules, the fees otherwise payable by him shall not be payable. But where a poor person demands a jury, this is not to exempt him from obligation to pay or deposit jurors' fees.

A new fee (45 (iii)) is added to the Schedule to the principal Order, viz.:—"On the hearing of an application by the judge, 1*l.*"

The most important feature of the Order of 1928, however, is the insertion, after Fee 45A in the Schedule, of a new Fee 45B, with a cross-heading, "The Landlord and Tenant Act, 1927." This No. 45B is as follows:—"(i) On the consideration of the referee's report in an action, Fee No. 13. (ii) On the filing of a summons under Ord. LB. r. 16, 10*s.* (iii) On the hearing by the judge of a summons under Ord. LB. r. 16, 1*l.*"

[Where the summons is referred, this fee is payable on the consideration of the referee's report.]

Fresh order for payment.—A fresh order for payment may now be obtained although the amount does not exceed 20*l.* (County Court (No. 2) Rules, 1927, r. 6, amending Ord. XXIII. r. 15.)

Hearing fee.—When money is paid to the plaintiff, instead of into Court, the amount paid is not to be included in the claim for the purpose of calculating the hearing fee. (County Court (No. 2) Rules, 1927, r. 4.)

Index.—Index to the Parishes, Townships, Hamlets and Places. Sixth Edition. (Stationery Office, 70-0017-00-28. Price 10*s.* 6*d.*)

Jurisdiction: Claim for declaration.—The County Court has no jurisdiction to entertain an action by a vendor against a purchaser for a declaration that the purchaser has forfeited his deposit, and that the vendor is entitled to recover the deposit from the stakeholder. The Court has no jurisdiction to entertain a claim for a declaration in an action in which no sum of money is claimed. *Stiles* v. *Ecclestone,* (1903) 1 K. B. 544, is overruled by *R.* v. *Cheshire County Court Judge,* (1921) 2 K. B. 694. (*De Vries* v. *Smallridge,* C. A.)

Jury, trial by.—See sect. 19 of Administration of Justice Act, 1925, and Rules 3 and 3A. of Ord. XXII. (County Court (No. 1) Rules, 1925.)

Legitimation Rules.—The County Court (Legitimation Rules, 1927, were varied by the County Court (No. 2) Rules, 1927 (S. R. & O. 1927, No. 1152/L. 45, price 1*d.*), which provide for the procedure where the petitioner is an infant or of unsound mind.

Particulars of defence.—In Rule 9A of Ord. X.—(a) In paragraph (3) the words "order the defendant to file and deliver such statement, and may, if necessary, adjourn the action, and may make such order as to costs as the Court may think fit," are to be omitted and the following words substituted therefor: "(a) order the defendant to file and deliver such a statement; or (b) order further and better particulars of any statement already delivered; or (c) adjourn the action and may make such order as to costs as the Court may think fit."

(b) The following paragraph is inserted after paragraph (4), and stands as paragraph (5):—"(5) If a defendant fails to comply with any order of the Court made under this rule he may either

be debarred from defending altogether or only be allowed to defend on such terms as the Court may think fit." (County Court (No. 2) Rules, 1927, r. 5.)

Payment into Court: Notice.—The registrar need not give the notice required by Ord. XXIII. r. 34, when payment is transmitted from a foreign Court. (County Court (No. 2) Rules, 1928, r. 3.)

Poor persons.—The County Court (Poor Persons) Rules, 1928, add a new rule (20) to Ord. XXXIII., dealing with proceedings transferred to a County Court from the High Court. (S. R. & O. 1928, No. 566/L. 20, price 1*d*.)

Registrar's Court: Objections.—See the County Court (No. 1) Rules, 1928, which provide, by a new Rule 2 of Ord. XXIIB., "(2)—(a) Where the claim exceeds 5*l*. and any defendant intends to dispute the claim, or (b) Where the claim does not exceed 5*l*. and (i) the plaintiff does not consent to the action being tried by the Registrar in the event of the claim being disputed, or (ii) any defendant intends to dispute the claim and does not consent to the action being tried by the Registrar, the plaintiff or defendant, as the case may be, shall give notice to the Registrar accordingly within four clear days after the receipt of the notice prescribed by paragraph (1) of this rule." (Form 46B.) There are also small amendments to other rules of this Order.

Registrars' pensions.—Sect. 18 of the Administration of Justice Act, 1928, has amended sect. 4 (3) of the County Courts Act, 1924, with regard to the pensions of certain County Court registrars.

Review of taxation: Appeal.—No appeal lies from a review of a taxation of a bill of costs in the County Court if the amount claimed in the action is under 20*l*. There is no authority for the proposition that in the case of a review of taxation of costs there is a right of appeal however small the amount in dispute may be. (*Hives* v. *Dawson*, Div. Ct.)

Rules.—See County Court (No. 1) Rules, 1925, S. R. & O. 1925, No. 645/L. 7, price 3*d*.; County Court (No. 2) Rules, 1925,

S. R. & O. 1925, No. 1233/L. 38, price 2*d.*; County Court (No. 1) Rules, 1926, S. R. & O. 1926, No. 914/L. 25, price 3*d.*; County Court (No. 1) Rules, 1927, S. R. & O. 1927, No. 658/L. 27, price 1*d.*; County Court (No. 2) Rules, 1927, S. R. & O. 1927, No. 1152/L. 45, price 1*d.*; County Court (No. 1) Rules, 1928, S. R. & O. 1928, No. 212/L. 11, price 2*d.*; County Court (No. 2) Rules, 1928, S. R. & O. 1928, No. 506/L. 18, price 1*d.*

CRIMINAL LAW.

Appeals.—An appeal lies to the Court of Criminal Appeal from an order under the Forfeiture Act, 1870, s. 4, requiring a person convicted of felony to pay compensation to the prosecutor. (*R.* v. *W. Jones,* C. C. A.)

Bigamy: Evidence of Russian marriage.—On an indictment for bigamy, it is not sufficient for the purpose of proving a Jewish marriage celebrated in Russia to call a Jewish rabbi to testify as to the requisite ceremonial. It must be shown not only that the Jewish ceremony was gone through, but that by the law of Russia that ceremony is recognised as effective. A rabbi is not for this purpose an expert, being neither a professional Russian lawyer nor *peritus virtute officii.* (*R.* v. *Moscovitch,* C. C. A.)

Carnal knowledge: Corroborative evidence.—On a charge of carnal knowledge of a girl under sixteen, it is not sufficient corroboration that on discovering the girl's pregnancy her mother immediately charged the accused with responsibility. The case was not one like *R.* v. *Lillyman,* (1896) 2 Q. B. 167, where the girl's statement to the mother was admissible as being made at the time. The jury might infer from the mother's action that a statement was made by the girl inculpating the accused, but this did not amount to corroboration. (*R.* v. *Whitehead,* C. C. A.)

Carnal knowledge of girl under sixteen: Time limit.—The Criminal Law Amendment Act, 1928, alters yet once again the time limit for commencing prosecutions under the Criminal Law Amendment Act, 1885, s. 5, in respect of the offence committed by one having or attempting unlawful carnal knowledge of a girl of or above thirteen years of age and under sixteen. In the Act

of 1885, the time limit was three months. The Prevention of Cruelty to Children Act, 1904, s. 27, altered this to six months, and the period was then altered to nine months by the Criminal Law Amendment Act, 1922. The period is now once again extended by the present Act to twelve months.

Criminal Justice Act, 1925.—This Act, as amended by the Criminal Justice (Amendment) Act, 1926, has made important changes in criminal law and procedure. In especial, the rules as to venue are largely extended (sect. 11); the justices' powers of selecting Assizes or Quarter Sessions for committal for trial are enlarged (sect. 14), and provision is made for continuing a trial where a juror dies or becomes otherwise unavailable, if both prosecutor and accused consent in writing and the number of jurors is not reduced below ten. (Sect. 15.) The jurisdiction of Quarter Sessions is greatly increased (sect. 18), power is given in specified cases to dispense with a grand jury at Quarter Sessions (sect. 19), and the prescribed time for holding Quarter Sessions is altered. (Sect. 22.) The list of indictable offences committed by adults triable summarily is largely extended. (Sect. 24.) The necessity for backing warrants is done away with (sect. 31), and extensive changes are made in procedure on commitment by the justices for trial and as to depositions. (Sect. 32.) Special procedure is prescribed in the case of an offence by a corporation. (Sect. 33.) Certain new offences are created, such as forgery of passports (sect. 36), drunkenness while in charge of a motor car (sect. 40), and the taking of photographs, &c. in Court. (Sect. 41.) The execution of a warrant of arrest is authorised though the warrant be not at the time in the possession of the constable executing it (sect. 44), and, finally, any presumption of coercion where a wife commits an offence in her husband's presence is abolished, though if the offence was committed in his presence and in fact under his coercion, this is a defence except in treason and murder. (Sect. 47.)

Demanding with menaces.—See *Hardie* v. *Chilton*, *post*, pp. 126, 162.

Grand juries.—See the Grand Juries (Dispensation at Quarter Sessions) Rules, 1927.

Honours (Prevention of Abuses) Act, 1925.—This makes the traffic in dignities and titles of honour a criminal offence.

Incorrigible rogue.—Where a person is convicted as an incorrigible rogue on the ground that he has been guilty of indecent exposure, there being already a certificate of conviction against him for "vagrancy—exposure of person with intent to insult certain females," but no express adjudication in the certificate of the accused as a rogue and a vagabond, the conviction of being an incorrigible rogue can be supported. The Vagrancy Act, 1824, provided that, in virtue of the conviction for the earlier offence, he should be deemed to be a rogue and vagabond, and this whether the conviction so stated or not. Consequently the subsequent offence made him an incorrigible rogue. (*R.* v. *Teesdale*. C. C. A.)

Infanticide.—A child above a month is not a "newly-born child" within the Infanticide Act, 1922. (*R.* v. *O'Donoghue,* C. C. A.)

Penal servitude.—As to the Court's power to sentence a convicted person to penal servitude where he is convicted of two or more offences in respect of which he might be sentenced to terms of imprisonment amounting in the aggregate to a period of not less than three years, see Penal Servitude Act, 1926.

Poor prisoners' defence.—The rules of 1904 made under the Poor Prisoners' Defence Act, 1903, are repealed and replaced by the Poor Prisoners' (Counsel and Solicitor) Rules, 1927, S. R. & O. 1927, No. 537/L. 23, price 1*d*. As to the costs in cases certified for legal aid under the Act, see The Cost of Poor Prisoners' Defence Regulations, 1927, S. R. & O. 1927, No. 538/L. 24, price 1*d*., which supersede the Regulations of December, 1903.

CURRENCY AND BANK NOTES.—*And see* BANK NOTES.

Transfer to Bank of England.—The currency note issue has been transferred as from the 22nd November, 1928, to the Bank of England by the Currency and Bank Notes Act, 1928, s. 4, which contains the necessary technical provisions, including

power to that Bank to issue notes for 1*l.* and 10*s.* (Sect. 1.) The Bank has power to call in the transferred currency notes on exchanging them for banknotes of the same value, on giving three months' notice in the London, Edinburgh, and Belfast *Gazettes*. (Sect. 4.)

DANGEROUS DRUGS.

The Dangerous Drugs Acts, 1920 and 1923, were amended and extended by the Dangerous Drugs Act, 1925, which came into force on the 25th September, 1928. (S. R. & O. 1928, No. 634, price 1*d.*)

Part III. of the Dangerous Drugs Act, 1920, has been extended by Order in Council dated 14th August, 1928, to benzoyl-morphine, dihydro-oxycodeinone, dihydrocodeinone and their respective salts, and to any preparation, admixture and extract containing benzoyl-morphine, dihydro-oxycodeinone or dihydrocodeinone. (S. R. & O. 1928, No. 644, price 1*d.*)

Provisional Rules were made, dated September 1st, 1928, for controlling the manufacture, sale, possession and distribution of (1) dihydro-oxycodeinone and dihydrocodeinone, and (2) benzoyl-morphine. (Each price 1*d.*)

Consolidating regulations.—The Home Secretary has given notice of intention to issue new Regulations under sect. 7 of the Dangerous Drugs Act, 1920. These regulations are due to come into force on January 1st. (*London Gazette*, November 2nd, 1928.)

DEATH DUTIES.

Estate duty: Agricultural property.—See sect. 23 of Finance Act, 1925.

Estate duty: Foreign settlement.—A testator domiciled in Hong Kong made a will by which he settled real and personal property situate there on his son for life with remainders over. English trustees were subsequently appointed, and an application regarding the administration of the trust was made to the English Chancery Division. The tenant for life died domiciled in Hong Kong. The investments representing the trust property were

situate abroad. No estate duty was payable on his death. The succession was constituted by the law of Hong Kong, and could not be changed into an English succession by the appointment of English trustees and their application to the English Court. (*Att.-Gen.* v. *Belilios,* C. A.)

Estate duty: Incidence on cesser of annuity.—A testatrix bequeathed a fund to trustees to provide annuities for certain persons, and directed that, as each of the several annuities ceased to be payable, such part of the fund as was required to provide for the same should go to X. She bequeathed the residue of her estate to Y., subject to payment of funeral and testamentary expenses, debts, legacies, the annuity fund, the duties on all legacies and annuities bequeathed by the will, and "all duties, costs and expenses consequent on the probate or incidental to the execution of the trusts of this my will or the due carrying out or giving effect to the dispositions made thereby or incurred in or incidental to the due administration of my estate." It was held that the estate duty payable on the cesser of each annuity would be payable out of the residuary estate, and that the executors must retain in their hands a sufficient sum to meet the duty. (*Re Jones, Lambert* v. *Colbourn,* Romer, J.)

Estate duty: Incidence—Undivided share.—The Law of Property Act, 1925, has not altered the incidence of estate duty in respect of an undivided share in realty. A testator, who made his will in 1925, gave all his undivided shares in real estate in the county of York to X., and the residue of his estate to Y. He confirmed his will by a codicil made in 1927, and died in 1927. Estate duty was paid by the executors in respect of the undivided shares. It was held that the executors were entitled to recover from X. the duty so paid, such repayment to be made at the option of X. by instalments with interest at 4 per cent., in accordance with the Finance Act, 1894, s. 9 (4), the Finance Act, 1896, s. 18, and the Finance Act, 1919, s. 30. (*Re Wheeler, Jameson* v. *Cotter,* Tomlin, J., following an unreported decision of Eve, J., in *Re Mellish* (1927), M. 1674. And see 46 L. N. 118.)

Estate duty: Rates.—For existing rates, see sect. 22 of Finance Act, 1925.

Estate duty: Receipt.— Whilst the Estate Duty Office cannot give a receipt for estate duty at the moment of payment, on request, however, and on presentation of a copy or draft of the Inland Revenue affidavit at the moment of payment of the duty, a certificate will be endorsed on the copy or draft in the following form:—

"*Re* deceased.

"I hereby certify that an affidavit duly receipted for the payment of *l.* estate duty and interest thereon has been stamped to-day.

"Date .

For Accountant and Comptroller-General
of Inland Revenue."

The solicitor concerned can, of course, complete the copy or draft before lodging the original affidavit at the Probate Registry by adding the particulars of the assessment or any alterations made in the Estate Duty Office in the figures. (Letter of the Estate Duty Office, E.D./B.P./1055/1927, to the Sheffield District Incorporated Law Society.)

Legacy duty: Settled chattels.—If chattels not yielding income are settled by will to be enjoyed by persons in succession, legacy duty must be paid, when they vest in some person absolutely, on the value of the chattels ascertained at the date when they so vest absolutely, not at the date of the testator's death. (*Att.-Gen.* v. *Rudge*, Rowlatt, J.)

Northern Ireland.—See Order in Council, dated 13th July, 1928. (S. R. & O. 1928, No. 562, price 1*d.*)

Settled property: Aggregation.—The exemption from aggregation in the case of property passing on death under a disposition made by a person dying before the 2nd August, 1894 (Finance Act, 1900, s. 12; Finance Act, 1907, s. 16), is taken away by sect. 51 of the Finance Act, 1927.

DEATHS REGISTRATION.

The Births and Deaths Registration Act, 1926, contains various amendments of the law relating to certification of deaths and disposal of the dead.

DEFAMATION.

Finding of jury.—In a slander action by a chauffeur against his employer the jury found that false charges were made of the chauffeur having given joy rides to women in the employer's car, but that the statement was not defamatory. The verdict was upheld by the Court of Appeal. The question, defamatory or not, is for the jury, and only in the most extreme cases will their verdict on the point be interfered with. (*Broome* v. *Agar*.)

Privilege: Solicitor and client.—A letter from a client to a solicitor, written to obtain advice and assistance, is absolutely, and not merely qualifiedly, privileged. (*More* v. *Weave*, C. A.)

Qualified privilege: Duty of judge.—In an action of libel, where the defendant establishes a qualified privilege for the publication, and the plaintiff fails to adduce any evidence of malice, the judge is not obliged then and there to withdraw the case from the jury, but, if the defendant proposes to call evidence, may, in his discretion, defer ruling on the question of malice until he has heard the evidence of the defendant. (*Marbe* v. *George Edwardes* (*Daly's Theatre*), *Ltd.*, C. A.)

DENTISTS.

Ireland.—The Medical and Dentists Acts Amendment Act, 1927, confirmed an agreement (contained in Sched. II.) between Great Britain, the Irish Free State, and Northern Ireland for the registration and control of dentists.

Regulations: Fees.—Certain amendments affecting the fees under the Regulations of the Dental Board of the United Kingdom were made by Order in Council, 12th July, 1928. (S. R. & O. 1928, No. 560, price 1*d*.)

Removal from register: Non-payment of fees.—The registrar of the Dental Board is entitled to remove a dentist's name

from the register for non-payment of the annual retention fee of 5*l.* prescribed by the Board's regulations. (*Tattersall* v. *Sladen*, Astbury, J.)

Striking off register: Summary conviction.—A dentist can be struck off the register on account of conviction by a Court of summary jurisdiction. "Misdemeanour," in sect. 13 of the Dentists Act, 1878, is not confined to a misdemeanour tried upon indictment. (*Pickup* v. *Dental Board of the United Kingdom*, Div. Ct.)

DIPLOMATIC PRIVILEGE.

The status of a person claiming diplomatic privilege is conclusively settled by the Crown's statement, and whether any particular person occupies a position entitling him to share diplomatic immunity is not to be settled as a question of fact on evidence given by the parties. (*Musmann* v. *Engelke*, H. L.)

DOGS.

The Dogs Act, 1906, has been amended by the Dogs (Amendment) Act, 1928. The Act deals with the following matters:—

Carcases, unburied.—Sect. 3 provides that sect. 6 of the Act of 1906 (which provides that an owner of cattle shall not leave their carcases unburied in a place to which dogs can gain access) shall apply to a person having the control of cattle as it applies to an owner of cattle; and accordingly the words "or under his control" shall be inserted in that section after the words "belonging to him."

Finding dogs.—Sect. 2 provides that sect. 4 of the Act of 1906 shall be repealed, and the following section shall be substituted therefor—

"4.—(1) Any person (in this section referred to as 'the finder') who takes possession of a stray dog shall forthwith either (a) return the dog to its owner; or (b) take the dog to the police station which is nearest to the place where the dog was found and inform the police officer in charge of that station where the dog was found.

" (2) Where a dog has been so taken to a police station then (a) if the finder desires to keep the dog, he shall inform the said police officer of his name and address, and the said police officer shall make out in duplicate a certificate in such form as may be prescribed by the Secretary of State [see S. R. & O. 1928, No. 612, price 1*d.*] stating the description of the dog, the place where it was found, the date on which it was brought to the police station, the name and address of the finder, and shall give one copy of the certificate to the finder and retain the other, and thereupon the finder may remove the dog, but shall be under an obligation to keep it for not less than one month; (b) if the finder does not desire to keep the dog, the said police officer shall treat it as if it had been seized by him in pursuance of sect. 3 of this Act.

" (3) If the finder fails to comply with any of the provisions of this section, he shall be liable on summary conviction to fine not exceeding 40*s.*"

[Under the repealed section, the finder had either to (a) return the dog to its owner, or (b) give written notice to the police. It is now his duty, if he does not return the dog to its owner, to take the dog to the nearest police station. The police must allow him to keep it, if he desires to do so, but he will have to keep it for at least a month, so as to allow the true owner to reclaim it. If the finder does not wish to keep the dog, it will be treated as a stray dog seized by the police, and it may be destroyed if the owner does not claim it and pay all expenses within seven days.]

Poultry.—Sect. 1 provides that the Dogs Act, 1906, shall have effect as if sect. 1 thereof (which imposes liabilities on the owner of a dog for injuries done by that dog to cattle) applied to injuries done to poultry as it applies to injuries done to cattle; and accordingly the words " or poultry " shall be inserted in that section after the word " cattle " in both places where that word occurs. " Poultry " includes domestic fowls, turkeys, geese, ducks, guinea-fowls, and pigeons. The result is that the owner of the dog is liable for injury done by it to poultry without proof of *scienter* or negligence.

DONATIO MORTIS CAUSA.

A., in expectation of death, wishing to transfer to his wife money standing to his credit on current account at a bank, sent for the bank manager. Before the manager arrived, A. drew a cheque in favour of his wife for the balance on his account, and handed it to the wife. After the manager arrived, the wife handed him the cheque with instructions to open an account in her name. This was at 11 o'clock in the morning. The manager took the cheque to the bank, which was only a few minutes walk away. A. died at 12.30 p.m. Held: the gift to the wife was good, the manager having received the cheque in exercise of his authority and the matter being completed in A.'s lifetime. A. also drew a cheque for 200*l.* in favour of the wife on an account at another bank, and this also was handed to the bank manager, but by mistake it was post-dated. Held: this gift was ineffective. (*Re While, Wilford* v. *While*, Tomlin, J.)

EASTER.

Though the goal of a "fixed Easter" has not yet been reached, it is brought appreciably closer by the Easter Act, 1928. The Act provides that Easter Day shall, in the calendar year next but one after the commencement of this Act and in all subsequent years, be the first Sunday after the second Saturday in April. Thus, it cannot be earlier than April 9th, nor later than April 15th. At present, Easter Day is always the first Sunday after the full moon which happens upon or next after the twenty-first day of March, and if the full moon happens upon a Sunday, Easter Day is the Sunday after.

The Act is to commence and come into operation on such date as may be fixed by Order of His Majesty in Council, but before any such Order in Council is made, a draft thereof must be laid before both Houses of Parliament, and the Order is not to be made unless both Houses by resolution approve the draft either without modification or with modifications to which both Houses agree. Moreover, before making such draft order, regard is to be had to any opinion officially expressed by any Church or other Christian body.

The Act extends to the United Kingdom, the Isle of Man, and the Channel Islands, and His Majesty in Council may by Order extend it to any other part of His Majesty's dominions (except India, Canada, Australia, New Zealand, South Africa, Irish Free State, Newfoundland, Southern Rhodesia and Malta), and to any protected or mandated territory (except New Guinea, Western Samoa, South West Africa, and Nauru.)

ECCLESIASTICAL LAW.—*See also* TITHE.

Benefices Act.—The Benefices Rules, 1898, were superseded by the Benefices Rules, 1926. (S. R. & O. 1926, No. 357/L. 7, price 3*d*.) They apply to all proceedings under the Benefices Act, 1898, and the Benefices Act, 1898 (Amendment) Measure, 1923.

Bishops' pensions.—See the Episcopal Pensions Measure, 1926.

Church Assembly: Prohibition.—No writ of prohibition or certiorari may be directed to the Church Assembly or the Legislative Committee of the Church Assembly. Neither of these bodies exercises judicial functions so as to fulfil the test laid down in *Rex* v. *Electricity Commissioners*, (1924) 1 K. B. 171. (*Rex* v. *Legislative Committee of the Church Assembly, Ex parte Haynes Smith*, Div. Ct.)

Clergy pensions.—A system of pensions for the clergy, other than Diocesan Bishops (who are provided for by the Episcopal Pensions Measure, 1926, *supra*), was established by the Clergy Pensions Measure, 1926, which has since been amended by the Clergy Pensions (Amendment) Measures, 1927 and 1928.

Appeals under these Measures are to the Chancery Division by originating summons; they must be brought within six weeks after the date of the decision appealed against, unless the judge extends the time. (R. S. C. Ord. LIVE.)

Dilapidations.—For procedure on appeals from orders of Queen Anne's Bounty under sect. 49 of the Ecclesiastical Dilapidations Measure, 1923, see the Ecclesiastical Dilapidations (County Court) Rules, 1927. (S. R. & O. 1927, No. 93/L. 7, price 2*d*.)

Diocesan Boards of Finance.—As to the constitution, powers and duties of these, see the Diocesan Boards of Finance Measure, 1925.

Disused burial grounds.—The Ecclesiastical Court cannot sanction an agreement for the construction, by an electric lighting company, of a transformer chamber in a disused churchyard. It is a "building" and the erection is prohibited by sect. 3 of the Disused Burial Grounds Act, 1884. *Re St. Nicholas Cole Abbey*, (1893) P. 58, disapproved. (*St. Nicholas Acons (Rector and Wardens of)* v. *London County Council*, Jud. Com.)

Ecclesiastical Commissioners Acts, 1840, 1841 and 1885, were amended by the Ecclesiastical Commissioners Measure, 1926.

Ecclesiastical duties.—Provision is made by the Benefices (Ecclesiastical Duties) Measure, 1926, to secure the due performance by incumbents of their ecclesiastical duties, and to provide for the stipend of curates appointed under the Measure and in certain other cases. See the Benefices (Ecclesiastical Duties) Rules, 1928, made under the Measure. (S. R. & O. 1928, No. 406/L. 17, price 5*d*.)

First Fruits and Tenths were abolished by the First Fruits and Tenths Measure, 1926, which came into force on the 16th July, 1926.

Indian Church.—The legal union between the Church of England and the Church of England in India having been dissolved by the Indian Church Measure, 1927, the Indian Church Act, 1927, made provisions incidental and consequential thereto. The date of operation was fixed by Order in Council as 1st January, 1928. (S. R. & O. 1927, No. 1231.)

Leicester, Bishopric of.—The foundation of this bishopric was provided for by the Bishopric of Leicester Measure, 1925.

Measures, interpretation of.—The Interpretation Measure, 1925, lays down rules for the construction and proof of Measures passed under the Church of England Assembly (Powers) Act, 1919.

New dioceses.—The New Dioceses (Transitional Provisions) Measure, 1927, gives the Church Assembly power, upon the foundation of a new bishopric, to make provision as to the representation of the area affected in the House of Laity during the transitional period and as to the constitution or reconstitution of the Diocesan Conference of any new diocese concerned.

Unbeneficed clergy: Grants.—Grants may be made out of the Common Fund of the Ecclesiastical Commissioners, as additional stipend or otherwise, for any clerk in Holy Orders who (i) is unbeneficed; (ii) has attained the age to be prescribed by rule of the Ecclesiastical Commissioners; (iii) holds a curacy or performs ecclesiastical duty as assistant to the incumbent of a benefice; (iv) is qualified by service of such character and duration as may be prescribed as before; and (v) is approved by the Commissioners upon the recommendation of the bishop of the diocese in which he holds a curacy. The making of the above provision is in the discretion of the Commissioners, who must have regard to the personal needs and services of the Clerk. (Ecclesiastical Commissioners (Provision for Unbeneficed Clergy) Measure, 1928.)

EDUCATION.

"Efficient instruction in some other manner."—If the father of a child attending a county council school withdraws the child for an hour in each week at a time when the child would receive instruction in English and class singing in order that during the hour the child may be instructed in piano playing by a private teacher, this does not come within the terms of a bye-law permitting withdrawal "if the child is under efficient instruction in some other manner." The words of the bye-law only apply to cases where the whole of the child's instruction is being given in some other manner. (*Osborne* v. *Martin*, Div. Ct.)

Mentally defective child: Parent.—If the father of a mentally defective child is in prison and the child is in the custody of the mother, who fails to provide suitable education, an order can be made under sect. 54 of the Education Act,

1921, against the mother to send the child to a boarding school without the father's consent. She is the "parent" of the child within the meaning of the Education Act, 1921, Pt. V. (*Woodward* v. *Oldfield*, Div. Ct.)

Non-attendance.—On a charge against a father of failing to cause his child to attend school, the justices are not entitled to take into account as an extenuating circumstance justifying dismissal of the summons under the Probation of Offenders Act, 1907, that the non-attendance was due to the child's employment at a wage, the Board of Education having refused an application for exemption on that ground. Nor in the circumstances is there "reasonable excuse" for non-attendance. (*Thomas* v. *Hughes*, Div. Ct.)

Playground: Non-provided school.—The local education authority may pay the cost of paving or flagging the playground of a non-provided school; it is not an alteration or improvement in the "buildings" within sect. 29 (2) (d) of the Education Act, 1921, so as to make the cost fall on the managers. (*Council of the County Palatine of Lancaster* v. *Crowe*, Div. Ct.)

Teachers: Dismissal.—A local education authority has power to dismiss teachers on the recommendation of a sub-committee appointed by it to scrutinise expenditure and effect reductions and savings, for it can delegate to a sub-committee under sect. 4 of the Education Act, 1921. (*Richardson* v. *Abertillery Urban District Council*, Eve, J.)

Teachers: Superannuation.—The Teachers (Superannuation) Act, 1925, made provision for superannuation of teachers and other educational workers, and amended the School Teachers (Superannuation) Acts, 1919 to 1924. Sect. 11 of the Act of 1925 was amended by the Teachers (Superannuation) Act, 1928, so as to allow four years' service in a foreign country.

Rules.—The general rules to carry out the Act of 1925 are the Teachers Superannuation Rules, 1926 (S. R. & O. 1926, No. 415); certain service in Guernsey comes within the scope of the Act. (S. R. & O. 1928, No. 623, price 1*d.*)

EGGS.

Important provisions are contained in the Agricultural Produce (Grading and Marking) Act, 1928, with regard to eggs "laid by a domestic fowl or domestic duck."

Cold storage or chemical storage of eggs.—Sect. 4 provides that any premises used or intended to be used by way of trade or for purposes of gain for the cold storage or chemical storage of eggs may be registered in the prescribed manner in a register kept by the council of the county or county borough in which the premises are situated, in accordance with regulations made by the Minister under this Act. (Sub-sect. (1).) "Chemical storage" means storage for the purpose of preserving eggs by any process which does not alter the composition of the shells, including storage in any gas, vapour, or gaseous mixture. (Sect. 7.)

Sub-sect. (2) of sect. 4 provides that if and so long as any Order in Council made under sect. 2 of the Merchandise Marks Act, 1926, is in force prohibiting the sale or the exposure for sale in the United Kingdom of imported eggs unless they bear an indication of origin, the following provisions shall have effect, that is to say—

(a) No premises shall be used by way of trade or for the purposes of gain for the cold storage or chemical storage of eggs, unless the premises are registered premises, and, if any premises are used in contravention of the provisions of this section, the occupier of the premises shall be guilty of an offence under this section:

(b) It shall not be lawful to cause British eggs (*i.e.*, eggs produced in the United Kingdom (sect. 7)), which have been kept in cold storage or chemical storage in any premises used for such storage of eggs by way of trade or for purposes of gain, to be removed from such premises unless the eggs have been marked in the prescribed manner, and for the purpose of securing the enforcement of this provision the Minister may, by notice in writing served on the occupier of any registered premises, give directions that British eggs which have been kept in cold storage or chemical storage in any part of the premises are not to be

removed from such parts of the premises as may be specified in the notice until they have been marked in the prescribed manner, and a copy of any notice so served shall be kept by the occupier conspicuously posted in such parts of the premises as the Minister may direct; if any person contravenes or fails to comply with the provisions of this paragraph or of any directions given thereunder, he shall be guilty of an offence under this section:

(c) An officer of the council of any county or county borough, if authorised in that behalf and on production if so required of his authority, may at any time during the hours when the premises are open for business enter any premises in which he has reason to believe that eggs are kept in cold storage or chemical storage, and may search for and inspect eggs in the premises, and may require any person whom he finds in or about the premises to give such information as may reasonably be demanded of him as to any name and address required by the officer for the purposes of enabling him to carry out his duties under this Act, and any person who obstructs an officer so authorised in the execution of the powers conferred on him by this section or wilfully withholds any information which any such officer is empowered by this Act to require of him shall be guilty of an offence under this section:

(d) If any person removes, alters or obliterates any mark which, in compliance with the requirements of the foregoing provisions of this section, was borne by any egg at the time when it was stored in any such premises, or sells or exposes for sale any egg from which such a mark has been removed or on which such a mark has been altered or obliterated, he shall, unless he proves that he acted without intent to defraud, be guilty of an offence under this section, and in the case of a second or subsequent offence under this paragraph the Court may, in addition to any other penalty, order any eggs in relation to which the offence has been committed to be forfeited:

(e) Any person guilty of an offence under this section shall be liable on summary conviction in the case of a first offence to a fine not exceeding 5*l.*, and in the case of a second or subsequent offence to a fine not exceeding 20*l.*

Sect. 5 throws the duty of enforcing the provisions of the Act on the county or county borough councils, except that as

respects the Administrative County of London, the duty is thrown on the Common Council of the City of London and the councils of the metropolitan boroughs.

Preserved eggs, marking of.—Sect. 3 provides that, subject as hereinafter provided, it shall not, after the 28th February, 1929, be lawful to sell or expose for sale any egg which has been subjected to any process of preservation unless the egg is marked in the prescribed manner, and any person who acts in contravention of this section shall be liable on summary conviction in the case of a first offence to a fine not exceeding 5*l.*, and in the case of a second or subsequent offence to a fine not exceeding 20*l.*

Provided that the Minister shall by order exempt from the operation of this section eggs preserved by any process with respect to which he is satisfied that the marking of eggs preserved by that process cannot be enforced.

ELECTRICITY.

Act.—Numerous alterations were made in the Electricity Supply Acts by the Electricity (Supply) Act, 1926. *Inter alia* it constituted a Central Electricity Board.

Central England.—The scheme under the Electricity (Supply) Act, 1926, for Central England was adopted by the Central Elec-Electricity Board on May 31st, 1928. (Stationery Office, 55-0131-03-00, price 1*s.* 6*d.*)

Electric Lighting Act, 1909, s. 23.—X. bought an island site within the area in which Y. was authorised to supply electricity, and erected a number of buildings and a covered-in market. The ground floor of the buildings he let as shops, except two, where he carried on a draper's business. He erected an electric generating plant from which he supplied current to light the shops, the market and stalls and his own premises. He had not infringed the plaintiff's rights under sect. 23, *supra*, for the supply of electricity was incidental to his primary business, *i.e.*, the draper's business and the business of developing the island site. (*Caerphilly U. D. C.* v. *Griffin*, Russell, J.)

Special order: Revocation.—There is no power under the Electricity (Supply) Act, 1919, for a special order of the Elec-

tricity Commissioners to be revoked by another special order. (*R.* v. *Minister of Transport, Ex parte Leicestershire and Warwickshire Electric Power Co.*, Div. Ct.)

EXECUTOR.—*See also* ADMINISTRATION OF ASSETS; PROBATE.

Joint debtor appointed executor.—If A. and B. make a promissory note by which they jointly and severally agree to pay C. 100*l*., and C. appoints A. his executor, A. cannot sue B. on the note. At law the debt is discharged at the death of C. In equity A. is liable to pay the debt if the interests of the creditors require it, and in that event the debt is treated as assets in his hands and so is deemed paid when he proves the will. Either way the debt has ceased to exist before the action is brought. (*Jenkins* v. *Jenkins*, Div. Ct. See Article in "Law Notes" for July, 1928, p. 214.)

EXPIRING LAWS.

Expiring Laws Continuance Act, 1928.—This is the usual annual Act to continue certain expiring laws. The following Acts are continued in force until 31st December, 1929, and will then expire unless further continued:—The Labourers (Ireland) Act, 1883; The Seal Fisheries (North Pacific) Act, 1895; The Wireless Telegraphy Act, 1904; The Coal Mines (Minimum Wage) Act, 1912; The Grey Seals Protection Act, 1914; The Courts (Emergency Powers) Act, 1914 (so far as it relates to orders made by any Court before the 31st day of August, 1922); The Local Government (Emergency Provisions) Act, 1916 (sects. 6, 7 and 9; sub-sect. (7) of sect. 13; paragraph (3) of sect. 22); The Local Government (Emergency Provisions) (No. 2) Act, 1916; The Aliens Restriction (Amendment) Act, 1919 (sect. 1); The Ministry of Food (Continuance) Act, 1920 (so far as it authorises the making, or revoking, in whole or in part, of Parts I. and III. of the Sale of Food Order, 1921, and provides for the enforcement and imposes penalties for the breach thereof); The Unemployment (Relief Works) Act, 1920; The Employment of Women, Young Persons and Children Act, 1920 (sect. 2).

Also the following Acts are continued to 31st December, 1931:—The Statutory Undertakings (Temporary Increase of Charges) Act, 1918 (so far as it relates to tramway undertakings); The Harbours, Docks and Piers (Temporary Increase of Charges) Act, 1920; The Canals (Continuance of Charging Powers) Act, 1922; and the London Traffic Act, 1924.

Also the following Acts are continued until the 31st March, 1930:—The Agricultural Rates Act, 1896; and The Agricultural Rates Act, 1923 (except sect. 15).

And the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, is continued until the 25th of December, 1929, in England, and the 28th of May, 1930, in Scotland.

EXPLOSIVES.

The Order in Council of 6th February, 1922 (S. R. & O. 1922, No. 124), has been repealed by the Sale of Explosives Order, 1928. (S. R. & O. 1928, No. 245, price 1*d.*)

This Order applies to all explosives other than gunpowder, small-arm nitro-compound, safety cartridges made with gunpowder, or with small-arm nitro-compound, cartridges or charges for cannon or blasting made with gunpowder and not containing within themselves their own means of ignition, percussion caps, safety fuse, or fireworks.

No person may sell any explosive to which this Order applies unless the person desiring to purchase the explosive is in possession of a police certificate. But this does not apply to the owner, &c. of a mine or quarry in respect of the sale by him of explosives to his employees for immediate use in the said mine or quarry. A record must be kept of the nature and quantity of explosives sold, the date of each transaction, and the name and address of the purchaser, and shown to any Government Inspector, police officer, or duly appointed officer of the local authority so requiring.

Power is given to a chief officer of police to authorise the purchase of not more than ten pounds of explosive for immediate use in certain cases; the seller must see that the purchaser *countersigns the certificate at the time of sale.*

EXTRADITION.

Cameroons, Togoland and Tanganyika.—The extradition treaties with France now apply to the above territories. Great Britain has a mandate in respect of parts of the first two and the third; France in respect of parts of the first two. The operation is suspended within the Dominion of Canada. (S. R. & O. 1928, No. 575, price 1*d.*)

Mandated territories: Belgium.—The extradition treaty with Belgium has been extended to Palestine (excluding Trans-Jordan), Tanganyika Territory, the British Cameroons, the British sphere of Togoland, Nauru, New Guinea, and South West Africa (S. R. & O. 1928, No. 574, price 1*d.*), and to the Belgian mandated territory of Ruanda-Urundi. (Treaty Series, No. 20 (1928), Cmd. 3203, price 1*d.*)

FACTORY AND WORKSHOPS ACT, 1901.

Duty to fence.—The duty to fence securely dangerous machinery under sect. 10 of the Factory and Workshops Act, 1901, is an absolute duty. If, therefore, a person has been killed or injured in consequence of neglect to observe the provision of the section, it is no answer to a charge under sect. 136 that the occupier of the factory provided proper guards and placed on the workmen the responsibility of using them. "Neglect to observe" does not import any element of wilfulness; mere non-observance is "neglect" within the section, and the occupier is liable unless he has recourse to the provisions of sect. 141 (1) and brings the actual offender before the Court. (*Thomas* v. *Thomas Bolton & Sons, Ltd.*, Div. Ct.)

Horizontal milling machines.—For regulations made under sect. 79 of the above Act, see the Horizontal Milling Machines Regulations, 1928. (S. R. & O. 1928, No. 548, price 1*d.*)

FERTILISERS AND FEEDING STUFFS ACT, 1926.

Operation.—July 1st, 1928, was by Order appointed as the date for the coming into operation of the above Act. (S. R. & O. 1928, No. 439, price 1*d.*)

Regulations.—See the Fertilisers and Feeding Stuffs Regulations, 1928. (S. R. & O. 1928, No. 421, price 9*d*.)

FIRE BRIGADES.

Pensions.—See Fire Brigade Pensions Act, 1925.

FISHING BOATS.

Oil.—For right of owner to recover duty paid on hydrocarbon oil used on board his boat, see Finance Act, 1928, s. 2.

FOOD AND DRUGS.

Consolidation.—The Sale of Food and Drugs Acts have been consolidated by the Food and Drugs (Adulteration) Act, 1928.

The following enactments are repealed:—Sale of Food and Drugs Act, 1875, except sects. 30, 31, and 36; Sale of Food and Drugs Act Amendment Act, 1879; Margarine Act, 1887; Sale of Food and Drugs Act, 1899; Butter and Margarine Act, 1907; Milk and Dairies (Consolidation) Act, 1915, s. 9 and 3rd Sched.; Finance Act, 1921, s. 23; Licensing Act, 1921, s. 10; Sale of Food and Drugs Act, 1927.

Rum and butter toffee.—Toffee sold as rum and butter toffee was found to include, not only rum and butter, but a larger percentage of cocoanut fat. The offence of giving a false warranty under the Sale of Food and Drugs Acts was committed because the description implied that no fat except butter was used in the manufacture. (*Riley Bros.* (*Halifax*), *Ltd.* v. *Hallimond*, Div. Ct.)

Sale: Weights and measures.—The Sale of Food (Weights and Measures) Act, 1926, contains various provisions for the better protection of the public in relation to the sale of food.

Standard of quality.—It is no defence to a charge under the Sale of Food and Drugs Act, 1875, s. 6 [now sect. 2 of the Food and Drugs (Adulteration) Act, 1928], of selling to the prejudice of the purchaser an article of food not of the nature, substance and quality demanded, that there is no recognised standard of quality for the article in question. The case may

be one where, on any view of the minimum requirements, the article falls short of what is necessary, as where extract of meat and malt wine is sold which contains only 2 per cent. of meat and malt. (*Bowker* v. *Woodroffe,* Div. Ct.)

Wholesaler.—A charge against a wholesaler of aiding and abetting a retailer to commit an offence under the Food and Drugs Act cannot succeed in the absence of evidence to show that he actively abetted the retailer in selling the offending article without warning. (*Bowker* v. *Premier Drug Co., Ltd.,* Div. Ct.)

FRANCE.

Student employees.—For the text of the arrangement made between the competent French and British authorities for facilitating the admission of student employees into the two countries, and of notes exchanged between the Marquess of Crewe and M. Briand, see Command Paper, 3138, price 3*d.*

GAMING AND WAGERING.

Betting duty.—This was imposed as from the 1st November, 1926, by the Finance Act, 1926, Pt. II. An amendment was made by sect. 18 of the Finance Act, 1927, and as from the 1st October, 1928, the duty was reduced by sect. 14 of the Finance Act, 1928. The former $3\frac{1}{2}$ per cent. duty was reduced to 2 per cent., and the former 2 per cent. duty to 1 per cent. The duty is not payable in respect of wagers on horse races made by members of a proprietary club by means of the totalisator and pari-mutuel. (*Attorney-General* v. *Luncheon and Sports Club,* C. A.)

Bookmaker: Disqualification.—A bookmaker can be ordered to be disqualified from holding a bookmaker's certificate under the Finance Act, 1926, if judgment has been obtained against him for penalties for contravention of Part II. of that Act. The judgment constitutes a "conviction" within the meaning of sect. 17 (1) of the Act. (*Attorney-General* v. *Still and Bennet,* Rowlatt, J.)

Bookmaker's clerk.—The Finance Act, 1926, s. 15, requires a certificate to be taken out by a bookmaker's clerk who is employed to receive bets on his employer's behalf. Such a person is a bookmaker within the definition of sect. 18 (1) of the Act. (*Lake* v. *Cronin*, Div. Ct.)

Club.—*See* Betting Duty, *supra*.

Football competitions.—An offence is committed under sect. 1 of the Ready Money Football Betting Act, 1920, if a newspaper publishes coupons entitling purchasers to compete for prizes for forecasting winning football teams. (*Sir W. C. Leng & Co.* (*Sheffield Telegraph, Ltd.*) v. *Sillitoe*, Div. Ct.)

Foreign currency.—A contract to purchase foreign currency may come within the Gaming Act, 1845. It is a question of fact whether the contract is merely for the payment of differences calculated by the rate of exchange, or whether there is a genuine bargain to deliver currency. If the latter, the case is not within the Gaming Act, 1845. The definition of a wager in *Thacker* v. *Hardy*, 4 Q. B. D. 685, is not exhaustive. (*Iremonger* v. *Dyne*, C. A.)

Horse-racing: Entrance fees.—The entrance fees payable to the Jockey Club on the nomination of a horse for a race under the rules of racing are not legally recoverable. (*Ellesmere* (*Earl of*) v. *Wallace*, Clauson, J.)

Stock Exchange.—One who through a half commission man employs stockbrokers to enter into transactions which they believe to be in the nature of genuine investments is liable to the stockbrokers in respect thereof, even though, as between himself and the half commission man, the transactions were in the nature of wagers. (*Weddle, Beck & Co.* v. *Hackett*, Swift, J.)

The "tote" is legalised by the Racecourse Betting Act, 1928. The vital part of the Act is to be found in sect. 1, which by sub-sect. (1) provides that nothing in the Betting Act, 1853, shall apply to any approved racecourse or any act done thereon on the days on which horse races, but no other races, take place thereon. The result is to withdraw to the extent mentioned the prohibition of the Act of 1853 against opening, keeping or using

"any house, office, room or other place" for the purpose of betting with persons resorting thereto. The section then proceeds, by sub-sect. (2), to authorise expressly certain things, any rule of law or enactment to the contrary notwithstanding. It makes it lawful on any approved racecourse (a) for the Racecourse Betting Control Board (see *post*, under sect. 2) and any person authorised by them to set up and keep a totalisator as defined; (b) for the Board or any person authorised by them to operate a totalisator in accordance with the Act, and for the purpose of effecting betting transactions, but on horse races only, and only on days when horse races, but no other races, take place on the racecourse; (c) for any person to effect betting transactions by means of a totalisator lawfully operated. A proviso secures that the powers thus conferred are without prejudice to rights of property.

Sub-sect. (3) defines "totalisator" as "the contrivance for betting known as the totalisator or pari-mutuel, or any other machine or instrument of betting of a like nature, whether mechanically operated or not." It also provides that "approved racecourse" means "any ground used for the purpose of a racecourse for racing with horses and any ground adjacent thereto, in respect of which ground or adjacent ground there is in force a certificate of approval issued under this Act."

The noteworthy points on this section appear to be:—(1) The "tote" is only authorised on approved racecourses. (2) The express authority, under sub-sect. (2), to operate a totalisator is conferred only on the Board and persons authorised by them. (Clause (c) merely authorises the public to take advantage of the "tote" when lawfully operated by others.) Probably, only the Board and persons authorised by it will attempt to operate a totalisator, but having regard to the first sub-section it is perhaps not certain that others would not be technically free to do so. (3) The user authorised is only on race days and in connection with horse racing.

Sect. 2 establishes a Racecourse Betting Control Board, consisting of a chairman and eleven members, to be a body corporate with perpetual succession, a common seal and power to hold land on or adjacent to a racecourse as may be reasonably required for the purposes of the "tote" and offices. The Board is appointed

as follows:—The chairman and one member by the Home Secretary, three members by the Jockey Club, two members by the National Hunt Committee, and one member each by the Secretary for Scotland, the Minister of Agriculture, the Chancellor of the Exchequer, the Racecourse Association, Ltd., and the Committee of Tattersalls.

Sect. 3 deals with the powers and duties of the Board, to whom is entrusted, *inter alia*, the task of certifying racecourses. It is, however, to be a condition of a certificate that the persons having the management of the racecourse shall provide a place, whether in a building or not, where bookmakers may carry on business and to which the public may resort for the purpose of betting, and that the admission charges are not to exceed, in the case of the bookmaker's assistant, the amount charged to members of the public, and, in the case of the bookmaker himself, five times that amount. There are also provisions for the division of all sums staked by "tote," less a percentage to be fixed by the Board generally or in respect to any particular racecourse. The percentage goes to rates, taxes and expenses, any residue being disposed of under a scheme to be prepared by the Board and approved by the Home Secretary, for the improvement of breeds of horses or the sport of horse racing.

Sect. 4 creates a rather novel species of criminal offence. It is punishable, by a fine not exceeding 50*l*., for any person on an approved racecourse to have a betting transaction with a person apparently under seventeen years of age, whether by means of a "tote" or not. But it is a defence to the charge that the person was in fact not under seventeen. In the case of feminine punters, this provision may give rise to delicate cases. Further, where the betting transaction is effected through the "tote," for the purposes of this section the transaction is deemed to be with the person having the management of the racecourse, and not with any other person. It will be observed that this makes the employer liable for acts done by an employee, while exonerating the employee himself.

For the use of the "tote" by clubs, *see under* Betting Duty, *ante*, p. 99.

Whist drive.—The occupier of a hall who holds a whist drive, charging 1*s.* for admission and giving prizes to the value of 5*l.*, commits an offence under the Betting Act, 1853, s. 1. (*Bennet* v. *Ewens,* Div. Ct., following *Peers* v. *Caldwell,* (1916) 1 K. B. 371.)

GOLD.

Any person in the United Kingdom owning any gold coin or bullion exceeding 10,000*l.* in value shall, on being required so to do by notice in writing from the Bank of England, forthwith furnish to the Bank in writing particulars of the gold coin and bullion owned by him, and shall, if so required by the Bank, sell to the Bank the whole or any part of the said coin or bullion, other than any part thereof which is *bonâ fide* held for immediate export or which is *bonâ fide* required for industrial purposes, on payment therefor by the Bank, in the case of coin, of the nominal value thereof, and in the case of bullion, at the rate fixed in sect. 4 of the Bank Charter Act, 1844. This is to have effect so long as the Gold Standard Act, 1925, s. 1 (1) remains in force. (Currency and Bank Notes Act, 1928, s. 11.)

GOVERNMENT STOCK.

Infant Scot.—The power of the Treasury under sect. 37 of the Finance Act, 1917, to make regulations facilitating dealings with Government stock, is extended by sect. 34 of the Finance Act, 1928, so as to include power to provide that, in the case of stock standing in the name of an infant domiciled in Scotland, documents may be accepted if executed by such persons and in such manner as would be sufficient under the law of Scotland.

GRAVE.—*And see* VAULT.

Gift by will for maintenance of.—A gift by will to trustees to invest and to pay the income thereof to a cemetery company "during such period as they shall continue to maintain and keep" two specified graves "in the said cemetery in good order . . ." with a gift over if the graves are not so kept in condition, is valid. It does not infringe the rule against perpetuities or the rule against inalienability. (*Re Chardon, Johnston* v. *Davies,* Romer, J.)

HABEAS CORPUS.

Successive applications for a writ of *habeas corpus* can be made to different judges of the same Court, and each judge is bound to hear the application on its merits, although some other judge has already refused a similar application. (*Eshugbazi Eleko* v. *Officer Administering the Government of Nigeria,* Jud. Com.)

HIGHWAYS.

Making up: Notice to frontagers.—It is not a condition precedent to charging a frontager with the costs of making up a roadway under sect. 150 of the Public Health Act, 1875, that all other frontagers have been served with notice under the section. The frontager not served is not chargeable, but the frontagers served must still bear their own proportion of the costs. (*Sunderland Corporation* v. *Gray,* Clauson, J.)

Repair: Standard required.—Under a private Act passed in 1878, the Manchester Corporation were bound to repair a road in the district of the Audenshaw U. D. C. Eve, J., held, on the construction of the Act, that the corporation was only bound to maintain the 1878 standard. But as that standard would not last long under the strain of modern traffic, he ordered the corporation to make a contribution to the district council towards the costs of durable repairs. The Court of Appeal held that there was no jurisdiction to make such an order. (*Manchester Corporation* v. *Audenshaw U. D. C.*, C. A.)

HOLLOW-WARE.

Duty.—The Finance Act, 1928, s. 9, imposes for five years, beginning on the 13th June, 1928, a duty of 25 per cent. on imported wrought enamelled hollow-ware. Empire products pay only two-thirds of the full duty. "Wrought enamelled hollow-ware" means wrought enamelled hollow-ware, whether of iron or steel, of a description commonly used for domestic purposes.

HORTICULTURAL PRODUCE.

Sale on commission.—Where horticultural produce is consigned for sale on commission, the salesman is required to enter in

a book kept by him certain particulars as to price, &c. (Horticultural Produce (Sales on Commission) Act, 1926.)

HOTEL.

Aliens Order, 1920: British subject.—Under the Aliens Order, 1920, art. 7, para. 3, the proprietor of an hotel must require a person known to him to be of British nationality to register. The effect of the Order is that every person staying on the premises must sign a statement as to his nationality. No further information need be given in the case of British subjects, but even a British subject must state his nationality, and the hotel proprietor is under a duty to see that this is done. (*Williams* v. *Jones,* Div. Ct.)

HOUSING.

Act.—The Housing Act, 1925, consolidated the enactments relating to the housing of the working classes in England and Wales.

Charge under Housing Act, 1925, s. 3: Priority.—If a local authority takes proceedings against the tenant of premises and obtains a charge under sect. 3 of the Housing Act, 1925, in respect of the expenses incurred by the authority in rendering the premises reasonably fit for human habitation, the charge affects all the proprietary interests in the premises and not only that of the person proceeded against. It was also said that (1) where the person proceeded against was not absolutely entitled, but only the rack rent owner, in proceedings to enforce the charge, it would be sufficient in the first instance to make that owner a party, though the Court in its discretion might give other parties interested an opportunity of being heard; (2) such persons would be bound by the order made against the rack rent owner, and would not be able to take objections which the rack rent owner might have taken. (*Paddington Borough Council* v. *Finucane,* Russell, J.)

This case was followed by a Divisional Court in *Bristol Corporation* v. *Virgin,* where the charge was held to have priority to a mortgage and a fee farm rent to which the premises were subject.

Owner.—Litigation having arisen in reference to the estate of a deceased which included certain house property, the solicitor to the administratrix engaged a rent collector to collect the rents with instructions to pay them only to the solicitor himself. The solicitor thereby became "owner" within sect. 28 of the Housing, Town Planning, &c. Act, 1919 (now represented by sect. 3 of the Housing Act, 1925), so as to become personally liable for the costs of work done by the local authority under the Act. The solicitor was "owner" within the section as being "the person for the time being receiving" the rents. He was, therefore, personally liable, though he would have a right to be recouped by his client. (*Watts* v. *Battersea Corporation,* Div. Ct.)

Subsidy: Drainage.—A builder built certain houses as a private enterprise in a rural district with a view to obtaining the subsidy under the Housing, &c. Act, 1923. He did not comply with the bye-laws of the rural district council as to drainage, and he brought an action against the council which was withdrawn by agreement on the council undertaking to appoint a sub-committee to settle outstanding questions. The sub-committee agreed with the builder that the drainage scheme should remain as then existing on certain conditions and that the council would apply to the Minister of Health for his approval of the building subsidy. The builder was unable to obtain specific performance of the agreement. The sub-committee had no authority to allow the drainage contrary to the system of the council to remain as then existing in contravention of its own bye-laws (*Yabbicom* v. *King,* (1899) 1 Q. B. 444), and the council could not invest a sub-committee with power to enter into a contract. (Local Government Act, 1894, s. 56.) Sect. 111 of the Housing Act, 1925, did not apply, for the sub-committee was not appointed for the purposes of that Act. With regard to the subsidy, the Minister of Health would not have power to relax the bye-laws, sect. 99 of the Housing Act, 1925, only applying to housing schemes promoted by certain bodies. (*William Bean & Sons, Ltd.* v. *Flaxton R. D. C.*, C. A.)

HUSBAND AND WIFE.

Separation deed: Income tax.—In a separation deed a husband agreed to pay his wife such a sum in each year as, after deducting income tax, would amount to 3,000*l*. He also agreed to pay all super-tax in respect of his or her income, except super-tax in respect of any income of the wife not coming to her under the deed in excess of 1,400*l*. a year. In the event of her income from other sources exceeding 1,400*l*. a year, the husband must pay, in respect of the super-tax on the wife's income, a sum which bears the same proportion to the super-tax on the wife's entire income as her income under the deed, plus 1,400*l*., bears to her entire income. (*Fleetwood-Hesketh* v. *Fleetwood-Hesketh,* C. A.)

INCOME TAX.

Accumulation during minority: Repayment.—If the income of a fund is directed to be accumulated during the minority of A., and on A. attaining majority the accumulations are to be invested as capital and held on trust to pay to A. the income for life, A., on attaining majority, can claim repayment of the income tax paid on accumulated income. Sect. 25 of the Income Tax Act, 1918, is applicable even though A. is not entitled to payment of the accumulated income, which has to be capitalised. (*Dale* v. *Mitcalfe,* C. A.)

The trustees of a will were directed to hold the residue of an estate in trust for the five children of the testator's sister, and for *any other children who might be born to her* after the date of the will, and to divide the funds when the youngest child attained twenty-one. As the birth of further children had to be presumed to be possible, the five children were not entitled to relief under sect. 25 (*supra*), which only applies when the contingency is the attainment of a particular age or marrying. (*Inland Revenue Commissioners* v. *Bone,* C. S.)

Under a will the income of a fund was to be accumulated for twenty years after the death of the testatrix, and at the end of that time the accumulated fund was to be transferred to X. X. could not claim repayment of income tax paid during the twenty

years under sect. 25 of the Income Tax Act, 1918. The contingency was not fixed with reference to the then age of X. (*White* v. *Whitcher,* Rowlatt, J.)

Alimony: Foreign decree.—Alimony was payable to a woman, resident in the United Kingdom, by her former husband under a decree of a Swedish Court. The alimony was income from a foreign possession and assessable under Case V. of Sched. D. (*Commissioners of Inland Revenue* v. *Anderström,* C. S.)

Appeal by way of special case.—It is a condition precedent to the statement of a case on a point of law by general or special Commissioners for Income Tax that application therefor be made in writing within twenty-one days of the determination of the matter by the Commissioners. The requirement in this respect of the Income Tax Act, 1918, s. 149, cannot be waived. (*R.* v. *Edmonton Income Tax Commissioners, Ex parte Thompson,* Div. Ct.)

Capital expenditure.—A trading company with a number of branch shops which follows a policy of opening and closing its branches according to local demands, cannot for income tax purposes, debit to its trading account the difference between the cost of new fittings, &c. for the new shops and the receipts from sales of equivalent fittings from the shops closed. This is a capital expenditure. (*Eastmans, Ltd.* v. *Shaw,* H. L.)

Charity: Agricultural society.—A society established for the improvement of agriculture generally is not prevented from claiming exemption from income tax by the fact that the members of the society enjoy certain incidental benefits, such as free admission to the society's shows, reduced rates for exhibiting, and a free copy of the yearly Journal. Such privileges attaching to membership as free admission to the society's shows do not prevent a society from being established for a "charitable purpose only" within sect. 37 (1) (b) of the Income Tax Act, 1918. (*Commissioners of Inland Revenue* v. *Yorkshire Agricultural Society,* C. A.)

Charity: General Medical Council.—The income of the General Medical Council is not exempt from income tax. The

Council is not established for charitable purposes only, nor is its income applied for charitable purposes only, so as to be exempt under sect. 37 of the Income Tax Act, 1918. (*General Medical Council* v. *Inland Revenue Commissioners*, C. A.)

Children's allowances are increased by sect. 16 of the Finance Act, 1928. For the first child a deduction of 60*l.* (instead of 36*l.*) is now allowed, and for each subsequent child 50*l.* (instead of 27*l.*). And the deduction is allowed in respect of children living at any time within the year of assessment; it is not necessary that the child should be living at the commencement of the year of assessment. Moreover, hitherto no deduction has been allowed in respect of any child entitled in his own right to an income exceeding 40*l.* a year; this 40*l.* is now altered to 60*l.*

It was held by Rowlatt, J., in *Heaslip* v. *Hosemer*, that a father is not entitled to a deduction from income tax under sect. 21 of the Finance Act, 1920, in respect of a daughter who is learning music from a teacher who gives her private lessons at his residence and directions for home study and practice.

Deduction: British Empire Exhibition guarantee fund.—A firm of asphalt contractors subscribed to the guarantee fund of the British Empire Exhibition at Wembley, for the sole purpose of obtaining contracts. In due course the firm was called upon to make a payment under the guarantee. The Commissioners held that the payment could be deducted in computing profits under Sched. D. for income tax purposes. The Court of Appeal reversing Rowlatt, J., restored this decision on the ground that the question was one of fact to be decided by the Commissioners, and that it was impossible to say as a matter of law that the proposed deduction was so far outside the scope of the business as to make it impossible for the Commissioners to decide as they had.

Deduction: Carrying on trade.—A company which carried on the business of marine insurance, entered into a contract for the purchase of ships, which, owing to a slump in the shipping trade, was cancelled, and the company lost 70,000*l.* A contention that a new business of dealing with ships had been begun was rejected, it being held that the company was not carrying on any trade from the profits of which the 70,000*l.* was an admissible

deduction. (*Devon Mutual SS. Insurance Association* v. *Ogg*, Rowlatt J.)

Deduction: Damage to ship.—The cost of making good damage to a ship occurring in course of detention by an enemy government during the war was held to be capital expenditure, and could not be deducted from subsequent profits. The necessity for repairs had not arisen out of the use of the ship in earning profits. (*Inland Revenue Commissioners* v. *Granite City SS. Co., Ltd.*, C. S.)

Deduction: Surrender of lease.—A payment made by colliery proprietors to their lessor for the surrender of an onerous lease is not a permissible deduction from their profits for income tax purposes; the sums were paid in respect of the company's fixed capital and not for the purpose of its trade of winning and getting coal. The principle laid down in *Usher's Wiltshire Brewery* v. *Bruce*, (1915) A. C. 433, at p. 468, as to the true meaning of Rule 3 of the Rules applicable to Cases I. and II. of Sched. D. of the Income Tax Act, 1918, was applied. (*Mallett* v. *Staveley Coal and Iron Co., Ltd.*, C. A.)

This case was followed by Rowlatt, J., in *Cowcher* v. *Richard Mills & Co.* There a company which carried on a business with several shops closed one down as unprofitable, and surrendered the lease, but had to agree to pay the equivalent of one-third of the rent for the rest of the term. This payment was not a permissible deduction from the profits of the business carried on at other premises. (*Cp. Eastmans, Ltd.* v. *Shaw, supra.*)

Deduction: Trading loss.—Loans which were made by a company to a subsidiary company were not fully recovered, but were not allowed as a deduction under Sched. D., Cases I. and II., Rule 3, in *Baker* v. *Mabie, Todd & Co., Ltd.*, Rowlatt, J.

Excess profits duty: Deductions from profits.—The cost of repairing damage suffered to mines during a strike during the accounting period cannot be deducted from the profits of that period for excess profits duty. (*Naval Colliery Co., Ltd.* v. *Commissioners of Inland Revenue*, H. L.)

Exercising a trade within the United Kingdom.—A Dutch firm, which had the management of a certain Dutch shipping

line between Rotterdam and London, which belonged to two Dutch companies, of which the Dutch firm were also directors, appointed N. & Co. sole agents in London of that line. N. & Co. did all that was required to be done in connection with the line in London. It was held (1) that the two Dutch companies were exercising a trade within the United Kingdom, and (2) that even assuming that the Dutch firm in appointing the English agents acted as shipping agents and not as directors, they nevertheless constituted the English agents direct agents of the two Dutch companies. (*W. H. Muller & Co.* v. *Lethem*, H. L.)

A Danish shipping company and an English shipping company established by agreement a regular line of steamers between Copenhagen and Hull, and the English company were to be the exclusive agents at Hull of the Danish company. Besides acting as forwarding agents for English consignors, the English company controlled the freights at this end, quoted rates of freight, arranged room on the steamers (whether their own or the Danish company's), and employed stevedores. The bills of lading were signed "for the master" by one of the English company's clerks. The English company also collected the freight for the outward-bound goods, and remitted what was due to the Danish company. It was held that the Danish company exercised a trade within the United Kingdom so as to be chargeable to income tax on the profits of that trade, and that they were chargeable in the name of the English company. (*Tarn* v. *Scanlan*, H. L.)

Fire policy monies.—A timber merchant must include in his income tax return the whole of a sum of money received from an insurance company in respect of timber destroyed by fire. It must appear in his profit and loss account as a trading receipt; it is not sufficient to enter the estimated book value as a trading receipt and carry the remainder into a reserve account. (*Green* v. *Gliksten*, C. A.).

Foreign shares: Holding for less than three years.—An investment company received during the first year of its existence a dividend from foreign shares, and had no other income from foreign possessions. The proper assessment for the first year was nil, and the second and third years one-third of the amount of the

dividend. Rule 1 (2) of the Rules applicable to Cases I. and II. of Sched. D. of the Income Tax Act, 1918, is not incorporated in Rule 1 of Case V., which relates to the receipt of dividends on foreign securities. There is no provision for applying to income derived from such dividends an average of any shorter period than three years. (*Ormond Investment Co., Ltd.* v. *Betts*, H. L.)

Husband and wife.—A married man living with his wife received interest for the first time in 1925—26 on War Loan bought by him in March, 1925. His wife was entitled under her marriage settlement to the interest on a small holding of War Loan. It was held that for the year 1925—26 the husband could be assessed only on the interest accruing to his wife in 1924—25, for there was no separate source of income. (Income Tax Act, 1918. Rule 16 of the General Rules, and Rule 2 of the Rules applicable to Sched. D., Case III. *Walker* v. *Howard*, Rowlatt, J.)

The meaning of Rule 16 of the General Rules was considered in *Derry* v. *Inland Revenue Commissioners*, C. S., where it was held that a woman was assessable where her husband was living apart from her owing to her illness.

Interest received without deduction: Sale.—T. received interest on War Loan in 1924—25 from which tax had not been deducted. In June, 1924, he converted his War Loan into Conversion Loan, from which tax was deducted. He was properly assessable in 1925—26 on the amount of War Loan interest arising during 1924—25 under Case III. of Sched. D. (*Turton* v. *Mitchell*, Rowlatt, J.)

Interest: Tax deducted—Loss.—It was decided by the Court of Appeal in *Attorney-General* v. *Metropolitan Water Board*, (1928) 1 K. B. 833, that a trader who has deducted income tax on making a payment of interest, &c. under Rule 21 of the General Rules applicable to all Schedules under the Income Tax Act, 1918, must pay it over to the authorities, although he has not made a profit equivalent to the amount deducted. To meet the hardship which might result in such circumstances, he is now allowed by sect. 19 of the Finance Act, 1928, to treat the

deduction so paid over as a loss under sect. 33 of the Finance Act, 1926, and to carry it forward under the General Rule for a period of six years, so that as against future profits he may have the benefit of that loss. This does not apply to assessments in respect of (i) any year before 1927—28, or (ii) copyright royalties, or (iii) payments not ultimately borne by the person assessed or which are charged to capital.

Ireland, Northern.—As to summary recovery of income tax, see sect. 22 of the Finance Act, 1928.

Irish Free State.—An agreement was made on the 25th April, 1928, between the British Government and the Government of the Irish Free State, amending the agreement of the 14th April, 1926, in respect of double income tax. The agreement is set out in the 4th Schedule to the Finance Act, 1928, and is confirmed by sect. 21 of that Act.

Landlord's property tax: Deduction by tenant.—The decision in *North London Property Co.* v. *Moy, Ltd.*, (1918) 2 K. B. 439, was overruled by sect. 26 of the Finance Act, 1926. The landlord is now only bound to allow the tenant to deduct tax from his rent on production of the receipt for the payment of the tax.

Milk-seller.—See *H. & C. Stephenson* v. *Walker* (Rowlatt, J.) for Sched. D., Case III., Rule 4, about the profits of a milk-seller.

Obsolete machinery.—A gas company decided to replace its vessels built during wartime with more suitable vessels built to their own specification. The new vessels were superior to the old in capacity, economy and in other ways, though admittedly the old vessels might still have had many years useful life. The Special Commissioners held that the vessels were not obsolete within Sched. D., Cases 7 and 11, Rule 7, and Rowlatt, J., whilst making observations on the proper use of the rule to encourage progressive businesses, upheld this as a finding of fact. (*South Metropolitan Gas Co.* v. *Dadd.*)

Partners.—In deciding whether profits have fallen short for some specific cause under Rule 11 of the Rules applicable to

Cases I. and II. of Sched. D. of the Income Tax Act, 1918, a comparison is not to be made between the profits made before the change and those made afterwards. The specific cause and its effects must be proved in each year of the assessment; there is no authority for taking any series of years before or after the change; attention must be paid to each year and the falling short in that year. (*Kneeshaw* v. *Clay and Horsfall*, C. A.)

Patent rights, sale of.—A company was formed primarily to acquire the benefit of an invention about centrifugal pumps, and acquired the existing patent. Its main business was to grant licences under the patents. The foreign rights were sold to an American company. A claim by the company that the profits on the sale was a capital asset failed. (*Ducker* v. *Rees*, H. L., approving the test laid down in *Californian Copper Syndicate* v. *Harris* (1904), 6 F. 894.)

Practice: Case stated.—To avoid delay in bringing before the Court revenue appeals on cases stated by the General or Special Commissioners, points of argument need not be delivered, and the case may be set down by either party. (*Tarn* v. *Scanlan*, H. L.)

Rates.—These are laid down by sect. 15 of the Finance Act, 1928. The standard rate for 1928—29 is 4*s.* in the 1*l.* In the case of an individual whose total income from all sources exceeds 2,000*l.*, income tax will be charged at the following higher rates in respect of the excess over 2,000*l.*:—

For every 1*l.* of the first 500*l.* of the excess, 4*s.* 9*d.*; for every 1*l.* of the next 500*l.* of the excess, 5*s.*; for every 1*l.* of the next 1,000*l.* of the excess, 5*s.* 6*d.*; for every 1*l.* of the next 1,000*l.* of the excess, 6*s.* 3*d.*; for every 1*l.* of the next 1,000*l.* of the excess, 7*s.*; for every 1*l.* of the next 2,000*l.* of the excess, 7*s.* 6*d.*; for every 1*l.* of the next 2,000*l.* of the excess, 8*s.*; for every 1*l.* of the next 5,000*l.* of the excess, 8*s.* 6*d.*; for every 1*l.* of the next 5,000*l.* of the excess, 9*s.*; for every 1*l.* of the next 10,000 of the excess, 9*s.* 6*d.*; for every 1*l.* of the remainder of the excess, 10*s.*

The excess over 4*s.* in each case is the new "sur-tax" (Finance Act, 1927, s. 38) which is payable as a deferred instalment of income tax on or before the 1st January, 1930. (*Ibid.* s. 42.)

It takes the place of super-tax, which will not be levied for the year 1929—30 or any subsequent year.

Super-tax is payable for the year 1928—29 at the same rates as for 1927—28 (Finance Act, 1928, s. 15); these rates are the same as the sur-tax above. (Finance Act, 1925, s. 14.)

Repairs.—The allowance under sect. 28 of the Finance Act, 1923, is continued until the 5th April, 1933. (Finance Act, 1928, s. 20.)

Residence.—A British subject who had had a financial business in England, discontinued it and went to live abroad, partly for reasons of his own and his wife's health. He lived in hotels in various places, but always visited England for many weeks in each summer to visit friends, obtain medical advice and perform certain Jewish religious observances. He had no permanent place of abode either at home or abroad until 1925, when he took a villa at Monaco. The Special Commissioners held that he was "resident" and "ordinarily resident" here, and this decision was upheld by the House of Lords, affirming the judgment of Rowlatt, J., and the Court of Appeal. The conclusions of the Commissioners were findings of fact, and there being evidence to support them, they could not be disputed. (*Levene* v. *Inland Revenue Commissioners.*)

A person was born in England of Irish parents, and lived near Bristol till 1919, being managing director of a company there. He then partially retired and went to live in Ireland where he had an estate. He continued to act as advisory director to the company, and came over from Ireland to attend directors' meetings once a month, staying for that purpose at a Bath hotel where the meetings were held. He always came alone on his visits to England, his wife remaining at home. On these facts he was resident here. No special or technical meaning is attached to the terms "resident" and "ordinarily resident" as used in the Income Tax Act, 1918. Accordingly the question is essentially one of fact for the Commissioners. A person is ordinarily resident in a country for income tax purposes if his residence there is not casual or uncertain, but is in the ordinary course of his life. (*Inland Revenue Commissioners* v. *Lysaght*, H. L.)

Residence: Company.—A company is not resident here for income tax purposes merely because it is incorporated here and has a registered office here. The company resides where its business is managed and controlled. (*Egyptian Delta Land and Investment Co., Ltd.* v. *Todd,* H. L.)

Return.—Sect. 17 of the Finance Act, 1928, gives an individual who is chargeable to sur-tax (and does not wish to disclose his financial position to the local inspector) the option of making a return of his total income to the Special Commissioners. If he does this, his return to the local inspector need contain only the amount of his income assessable under Scheds. D. and E. To exercise this option he must give notice in writing to the Special Commissioners not later than the 1st May next following the end of the year of assessment. If he gives notice in respect of one year, it will be effective for subsequent years until he gives a written notice revoking the election.

River conservancy board: Shipping dues.—A river conservancy board whose only revenue is derived from shipping dues which it has a statutory power to levy is not assessable to income tax under Sched. A. of the Income Tax Act, 1918. Such dues are not "tolls . . . and other concerns of the like nature having profits . . . arising out of any lands" within Sched. A., No. III. Rule 3. (*Commissioners of Inland Revenue* v. *Forth Conservancy Board,* H. L.)

Separate businesses.—A limited company was engaged in shipowning and (through nominees) in underwriting. A claim by the company that the two businesses should be treated separately succeeded before the Special Commissioners, and Rowlatt, J., upheld the decision. It was a question of fact, and there was evidence on which the Commissioners could come to their decision. (*Scales* v. *George Thompson & Co., Ltd.*)

Set-off.—On an information by the Attorney-General claiming income tax, the respondent cannot set off a claim for refunds of tax alleged to be due to him. There can be no set-off against the Crown. Set-off now depends on sect. 39 (1) of the Judicature Act, 1925, and Ord. XIX. r. 3 of the Rules of the Supreme

Court. But by Ord. LXVIII. r. 1 (c) nothing in the Rules is to affect the procedure and practice in proceedings on the revenue side of the King's Bench Division. (*Attorney-General* v. *Guy Motors, Ltd.*, Rowlatt, J.)

Shipping profits: Iceland; Germany.—See Relief from Double Income Tax on Shipping Profits (Iceland) Declaration, 1928 (S. R. & O. 1928, No. 563, price 1*d.*), and the Relief from Double Income Tax on Shipping Profits (Germany) Declaration, 1928. (S. R. & O. 1928, No. 390, price 1*d.*)

Statement under Income Tax Act, 1918, s. 103.—The Commissioners of Inland Revenue can require a bank to deliver statements under sect. 103 of the Income Tax Act, 1918, when it holds in its own name or in the name of nominees various descriptions of war loan not subject to tax deduction under the following conditions: (a) where the bank acts as trustee or executor under a will or settlement; (b) where the bank holds as security for the owner's overdraft, placing dividends to the debtor's account; (c) when the stock was taken by the bank as security not for the owner's personal account, but for the account of some other person, the dividends being accounted for by the bank to the owner of the stock in the manner agreed on, including the placing thereof to a realised security account to await liquidation of the principal debtor's estate; (d) when the stock was merely registered or inscribed at the request of the owner in the name of one of the bank's nominees, dividends being placed to the credit of the customer's account, or otherwise dealt with on his instructions. In each case the bank is in receipt of money belonging to some other person within the section. (*Attorney-General* v. *National Provincial Bank, Ltd.*, Rowlatt, J.)

Solicitor-trustee.—Where a trustee, who was a solicitor and had power to charge under the trust instrument, kept the trust accounts and supervised the trust income, and by arrangement with the other trustees and beneficiaries, instead of charging the usual professional fees, retained a small percentage of the income received, he was assessable to income tax on this percentage as profits of his profession under Case II. of Sched. D. The solicitor contended unsuccessfully (a) that the sums paid to him

were annual payments payable wholly out of profits or gains brought into charge within Rule 19 of the General Rules applicable to all the Schedules of the Income Tax Act, 1918; (b) that the trustees should have deducted income tax in making the payments; (c) that the sums were not chargeable under Case II. as profits accruing to him as a solicitor. (*Jones* v. *Wright*, Rowlatt, J.)

Super-tax: Annuity to widow by will.—For the construction of a clause drawn to obviate the decision in *Re Bowring*, (1918) W. N. 265, so as not to increase super-tax on other parts of the widow's income, see *Re Lord Armaghdale's Will Trusts*, *Craig* v. *Lady Armaghdale*, Russell, J.

Super-tax: Bonds with accrued interest.—A person bought bonds with coupons attached for accrued interest in arrear. The arrears of interest were subsequently paid to him by the company, less income tax. He was held assessable to super-tax in respect of such arrears of interest on the construction of the word "receivable" in sect. 5 (3) of the Income Tax Act, 1918. (*Leigh* v. *Commissioners of Inland Revenue*, Rowlatt, J.)

Super-tax: Companies' undistributed income.—Sect. 21 of the Finance Act, 1922, is amended by sect. 18 of the Finance Act, 1928, which provides a method by which companies may limit the time within which the Special Commissioners may take advantage of sect. 21.

Super-tax: Partnership profits—Dissolution.—The executrix and sole legatee of a deceased partner made an arrangement with the surviving partner, which admittedly made her a partner. Some years later a sum of 90,000*l.* was paid in respect of a debt contracted before the partner's death and which had to be treated as part of the assets of the original partnership. It was held that although the executrix had made herself liable as a partner, she was entitled to her share of this asset as legatee, and did not have to account for it for super-tax purposes. (*Lassen* v. *Inland Revenue Commissioners*, Rowlatt, J.)

Super-tax: Rates.—These remain as before (Finance Act, 1928, s. 15 (2)), *i.e.*, in respect of the first 2,000*l.*, nil. In respect of

the excess over 2,000*l.*, 9*d.* per 1*l.* for the first 500*l*; 1*s.* for the next 500*l.*; 1*s.* 6*d.* for the next 1,000*l.*; 2*s.* 3*d.* for the next 1,000*l.*; 3*s.* for the next 1,000*l.*; 3*s.* 6*d.* for the next 2,000*l.*; 4*s.* for the next 2,000*l.*; 4*s.* 6*d.* for the next 5,000*l.*; 5*s.* for the next 5,000*l.*; 5*s.* 6*d.* for the next 10,000*l.*; 6*s.* for the remainder of the income.

Super-tax: Representative assessments.—Neither sect. 41 of the Income Tax Act, 1842, nor Rule 4 of the All the Schedules Rules of the Act of 1918 is applicable to super-tax; consequently, representative assessments to super-tax cannot be made upon the trustees or the guardian of an infant beneficiary either in respect of the total income of the infant or in respect of the actual income received by the trustees of the guardian. (*Inland Revenue Commissioners* v. *Countess of Longford. Inland Revenue Commissioners* v. *Pakenham*, H. L.)

Super-tax: Sale of shares ex div.—Under a scheme for the amalgamation of two companies certain shares were sold without dividend rights. The dividend was held not to be part of the purchase price of the shares; the dividend was the vendor's income for super-tax purposes. (*Inland Revenue Commissioners* v. *Roberts*, Rowlatt, J., and C. A.)

Super-tax: Sched. A.—A testator declared that his wife and daughter should be entitled to the personal use of his house rent free, and directed the trustees of the will to pay to the wife and daughter, or whichever resided there, 2,000*l.* a year for the upkeep of the house. Mother and daughter both reside in the house, and the 2,000*l.* is paid to them. Half the annual value of the house and of the 2,000*l.* may be treated as income of each for super-tax purposes. The true test is not whether they had an independent property in the estate, but whether some profit or gain ensued to them in respect of the occupation. An assessment under Sched. A. is not really an assessment in respect of ownership of property, but on profits and gains arising from the occupation of property. (*Shanks* v. *Commissioners of Inland Revenue*, C. A.)

Super-tax: Specific legacy—Delay in giving assent.—Owing to difficulties of administration, executors delayed giving an assent

to a specific legacy of shares. It was held that the legatee's title related back to the date of the death, and thus the dividends were income belonging to the legatee from that date. They were therefore his income for the respective years in which they were declared, and not for the financial year in which the executor's assent was given. (*Commissioners of Inland Revenue* v. *Hawley*, Rowlatt, J.)

Sur-tax is substituted for super-tax by sect. 38 of the Finance Act, 1927. (*See under* RATES, *ante*, p. 114, and RETURN, *ante*, p. 116.)

Sur-tax: Regulations.—Regulations were made on August 4th, 1928 (S. R. & O. 1928, No. 610, price 1*d*.). They deal chiefly with the mode of serving various notices, which is authorised to be by post. The most important regulations are:—

4. Sur-tax is to be assessed and charged at the office of the Special Commissioners, London, and appeals are to be heard in London, Edinburgh, and Belfast, and at such other towns as the Commissioners of Inland Revenue may direct.

5. A person aggrieved by an assessment to sur-tax made upon him is entitled at any time within twenty-eight days from the date of the service of the notice of such assessment, or within such further time as the Special Commissioners shall allow, to give notice to the Special Commissioners of his intention to appeal to them against the assessment, and every such notice shall specify the grounds of appeal.

6. The sur-tax payable is to be remitted to the Accountant-General of Inland Revenue, Somerset House, London, W.C.2.

14. Paragraphs 2, 3, 4, 5, 6, and 7 of the Regulations dated December 6th, 1922 (S. R. & O. 1922, No. 1329), made by the Commissioners of Inland Revenue under sects. 7 (8), 220 (8) (a) and 238 (a) of the Income Tax Act, 1918, were revoked.

Three years' average: Abolition.—For the abolition of the three years' average, see sect. 29 of the Finance Act, 1926.

Trade: What is.—Although transactions (*e.g.*, "turning over cotton mills" during a boom) when considered separately may be

capital transactions, and any one taken by itself may not constitute a trade, yet a series of, *e.g.*, four) transactions may constitute a trade. (*Pickford* v. *Quirke*, Rowlatt, J., and C. A.)

Victory Bonds surrendered with interest.—Victory Bonds were surrendered in payment of estate duty at their face value with the addition of accrued interest. The personal representatives were not assessable to income tax in respect of the accrued interest. This was so held on the construction of sect. 34 of the Finance Act, 1917, as amended by sect. 42 of the Finance Act, 1918, and the terms of the prospectus relating to the issue of the bonds. (*Monks* v. *Executors of Sir G. W. Fox, deceased*, Rowlatt, J.)

Voluntary pension.—If it is the custom of a company to give to members of its staff a voluntary pension or allowance on their retirement, and on a director retiring a pension is awarded to him, he is not assessable to income tax in respect of the pension. (*Benyon* v. *Thorpe*, Rowlatt, J.)

Weekly wage-earners.—See the amending Regulations, dated 27th July, 1928, with respect to the assessment, charge and collection of income tax in the case of weekly wage-earners, and the procedure to be adopted for the purpose. (S. R. & O. 1928, No. 582, price 1*d*.)

INDUSTRIAL AND PROVIDENT SOCIETIES.

Amendment of rules.—It was held in *Biddulph and District Agricultural Society, Ltd.* v. *Agricultural Wholesale Society, Ltd.* (1927) A. C. 76, that the rules of a society registered under the Industrial and Provident Societies Act, 1893, might validly be amended so as to require members to take up and pay for an additional number of shares, and that the amendment would bind a member who had assented to it. The question whether members not so assenting would be bound was left open (see *Re Wilts. and Somerset Farmers, Ltd.*), and is now settled by the Industrial and Provident Societies (Amendment) Act, 1928, in the negative. The Act provides that notwithstanding anything in the Industrial and Provident Societies Act, 1893, s. 22, a member of a society registered under that Act

shall not, without his consent in writing having been first obtained, be bound by any amendment of rules registered after he became a member and after the passing of this Act, if and so far as such amendment requires him to take or subscribe for more shares than the number held by him at the date of registration of the amendment, or to pay upon the shares so held any sum exceeding the amount unpaid upon them at that date, or in any other way increases the liability of the member to contribute to the share or loan capital of the society.

The Act is to be construed as one with the Industrial and Provident Societies Acts, 1893 to 1913, and may be cited with them as the Industrial and Provident Societies Acts, 1893 to 1928.

INDUSTRIAL COURT.

The Report of proceedings in the Industrial Court in 1927 was published by the Ministry of Labour. (Vol. IX. 1273—1354; Stationery Office, 36—0059—13—00, price 8*s.* 6*d.*)

INFANTS.

Adoption of children.—The Act which introduced the principle of adoption into English law is the Adoption of Children Act, 1926. The Rules under the Act are the Adoption of Children (High Court) Rules, 1926 (S. R. & O. 1926, No. 1615/L. 45, price 1*d.*), and the Adoption of Children (County Court) Rules, 1926. (S. R. & O. 1926, No. 1602/L. 43, price 2*d.*)

Guardianship.—Important alterations were made by the Guardianship of Infants Act, 1925. Its two chief features are the placing of the mother in a position of equality with the father as regards appointing guardians and acting as guardian after the other's death, and the conferring of jurisdiction on Courts of summary jurisdiction. As originally enacted the Act allowed only the mother to apply to a Court of summary jurisdiction, but the father also is given the right by sect. 16 of the Administration of Justice Act, 1928. Either can apply now in High Court, County Court, or a Court of summary jurisdiction as to custody or access.

For Rules under the Act, see (as to the High Court) Ord. LV*a*.

(R. S. C. (No. 5), 1925, as amended by R. S. C. (No. 1), 1928); (as to the County Court), the County Court (No. 2) Rules, 1925; (as to Courts of summary jurisdiction), the Guardianship of Infants (Summary Jurisdiction) Rules, 1925. (S. R. & O. 1925, No. 960/L. 24, price 1*d.*)

Marriage.—As to consents, see sect. 9 of the Guardianship of Infants Act, 1925.

INSURANCE.

Bicycle a "vehicle": Newspaper scheme.—A registered reader of a newspaper was entitled to the benefit of an insurance scheme under which insurance money was payable for a fatal accident happening to him while a pedestrian in a public thoroughfare unless in charge of any vehicle or while riding a bicycle. The insured, while walking along the road pushing his bicycle was run over and killed by a lorry. Insurance money was not payable. The deceased was a pedestrian in charge of a vehicle. (*Hansford* v. *London Express Newspaper, Ltd.*, Rowlatt, J.)

Industrial insurance: Child.—It is an offence for an industrial insurance company to insure a child under ten for more than the amount specified in the Friendly Societies Act, 1924. The effect of the Industrial Assurance Act, 1923, as amended by the Friendly Societies Act, 1924, is to make the fact of insurance an offence, not merely payment of the insurance monies. The Court further held that a proviso in the policies that the statutory restriction as to amount should apply thereto had no operation in law and did not prevent an offence from being committed. Further, that proceedings need not be instituted within six months from the first issue of the policy: it suffices if they are instituted within six months of the last payment of a premium (per Lord Hewart, C.J.) or whilst the policies are in force (per Avory, J.). (*Harker* v. *Britannic Assurance Co., Ltd.*, Div. Ct.)

Industrial insurance: Individual transfer.—The Industrial Assurance (Individual Transfer) Regulations, 1923, have been rescinded. The form of consent and document annexed thereto required by sect. 26 of the Industrial Insurance Act, 1923, is that

set out in the Schedule to the Industrial Insurance (Individual Transfer) Regulations, 1928. (S. R. & O. 1928, No. 580, price 1*d.*) The society from which the transfer is to be made must supply all necessary information on payment of one shilling.

Life: Assignment.—A testator having taken out a policy on his life for twelve months assigned it to the plaintiff. Before the expiration of the policy the testator renewed it for a further period of three months, the policy being altered by endorsement of the extension but no new policy being issued or fresh stamp paid. The testator died during the extended period of three months. The policy monies belonged to the assignee and not to the testator's estate. The intention was to extend the original contract, but not to rescind it. (*Royal Exchange Assurance* v. *Hope*, C. A.)

Life: Increase of risk after acceptance.—If a proposal for a life policy is accepted, but before the policy becomes effectual by payment of the first premium, there is an increase of risk, this fact must be communicated to the insurers. (*Looker* v. *Law Union and Rock Insurance Co., Ltd.*, Acton, J.)

Life: Suicide.—A. borrowed money from an insurance company on mortgage of leasehold premises and a life policy effected with the company. The policy contained a condition that it should be void if A. died by suicide, but should remain in force to the extent of the pecuniary interest of "third parties" *bonâ fide* acquired for value and notified to the company at least a month before death. A. committed suicide. The company was able to enforce the mortgage of the leasehold premises without taking the policy into account. The policy was void; the expression "third parties" did not include the company itself. (*Royal Mutual Insurance Society, Ltd.* v. *Barrett*, Tomlin, J.)

Marine: Both ships to blame—Subrogation.—A ship insured for 4,000*l.* collided with another vessel and sustained damage to the extent of 5,000*l.* Both ships were held to blame and the damage was divided between them, so that 2,500*l.* was received from the owners of the other vessel. The underwriters were held liable only for 1,500*l.*, being the 4,000*l.* for which alone they were liable under the policy, less the 2,500*l.* received from the other

ship to which they were subrogated. (*Goole and Hull Steam Towing Co., Ltd.* v. *Ocean Marine Insurance Co., Ltd.*, Mackinnon, J.)

Marine: Continuation clause.—A policy of marine insurance provided that the insurance should continue if at the expiring date the ship had not reached her then port of destination, and also that if the ship were in a damaged condition when the insurance expired the risk should continue for "the immediate consequences" of such damage till repair or sale. On the expiring date of the policy the ship was at sea, and before reaching her destination grounded on a reef. She was got off and taken to her first port of destination, where temporary repairs having been effected she proceeded on her voyage. But the repairs proving insufficient she became a wreck. The underwriters were held liable. The loss was due to the original damage and the risk continued till that had been effectively repaired or there had been unnecessary delay in effecting repair, neither of which things had happened. (*Merchants Marine Insurance Co., Ltd.* v. *Liverpool Marine and General Insurance Co., Ltd.*, C. A.)

Marine: Master's negligence.—Where the negligence of the master of a ship results in the continuing action of a previously existing peril of the sea, the underwriters are liable both under clause 8 of the Institute Time Clauses, if incorporated in the policy, and even independently of that clause if not incorporated. (*Lind* v. *Mitchell*, C. A.)

Marine: Reinsurance—Stamp.—An agreement between two companies whereby one agrees to participate in all marine insurance risks undertaken by the other company, bearing its own proportion of losses and being entitled to its own proportion of profits, is a contract of marine insurance requiring to be embodied in a stamped policy, failing which the contract is void. (*Re National Benefit Assurance Co., Ltd., Ex parte The English Insurance Co., Ltd.*, H. L.)

IRISH FREE STATE.

Compensation to public servants.—The Privy Council has, on a fresh reference of the matter, affirmed its previous decision

in *Wigg* v. *Att.-Gen. for the Irish Free State* ((1927) A. C. 674) as to the rights of judges and other public servants who were discharged or who retired in consequence of the change of Government on the establishment of the Irish Free State. (*Re Irish Civil Servants.*)

JUDICATURE ACT, 1925.

This Act (the full title of which is the Supreme Court of Judicature (Consolidation) Act, 1925) consolidated the Judicature Acts. It has been amended by the Administration of Justice Act, 1928. The amendments are dealt with in this book under their appropriate headings. The sections of the Act of 1925 repealed or affected are sects. 57 (1); 99; 109 (2); 112; 115 (1); 116 (4); 118 (1); 119; 120; 126 (3); 161 (5); 162 (1); 167 (4); 169; 170; 171; 213 (2); First Schedule; Third Schedule, Part I.

JUDICIAL COMMITTEE.

Dominion judges.—There is now no limit to the number of dominion judges who may be members of the Judicial Committee. (Administration of Justice Act, 1928, s. 13.)

Rules.—Previous rules were replaced by the Judicial Committee Rules, 1925. (S. R. & O. 1925, No. 440/L. 4, price 6*d*.)

JUDICIAL PRECEDENT.

Decisions of an inferior Court which stand because on appeal the superior Court is equally divided are binding on Courts of co-ordinate jurisdiction with that superior Court. (*Hart* v. *Riversdale Mill Co., Ltd.*, C. A.)

The Court of Appeal having, in *Hardie and Lane, Ltd.* v. *Chilton*, expressed the view that *R.* v. *Denyer* was wrongly decided (*see post, under* MONEY PAID UNDER MENACES), subsequently, in the Court of Criminal Appeal, Hewart, C.J., made the following announcement: "It may be well to make it clear, for the purposes of the administration of the criminal law, that, unless and until the decision in *R.* v. *Denyer* in this Court is reversed by the only competent tribunal, it is binding upon

and will be enforced by this Court against any person or persons offending in like manner." (*Times Newspaper*, April 24th, 1928.)

Though it will only do so in very exceptional circumstances and as a matter of indulgence, the Privy Council can review its own decision on a former occasion. (*Re Irish Civil Servants*, P. C.)

JUDICIAL PROCEEDINGS.

Regulation of reports.—The Judicial Proceedings (Regulation of Reports) Act, 1926, makes it a criminal offence, (a) in relation to *any* judicial proceedings, to print or publish any indecent matter, or (b) in relation to proceedings for dissolution or nullity of marriage, or for judicial separation or restitution of conjugal rights, to print or publish any particulars, except (i) the names, addresses and occupations of the parties and witnesses; (ii) a concise statement of the charges, defences and countercharges in support of which evidence has been given; (iii) submissions on any point of law arising in the proceedings, and the Court's decision thereon; (iv) the judge's summing up and jury's finding, and the judgment and observations made by the judge in giving judgment.

JUSTICES.

Appeal by special case: Authority of clerk to U. D. C.—The clerk to an urban district council can enter into a recognizance to prosecute an appeal by special case. On the construction of sect. 259 of the Public Health Act, 1875, the clerk does not need any special authorisation by the council. See also sect. 3 of the Summary Jurisdiction Act, 1857. (*Lawrence* v. *Martin*, Div. Ct.)

Case stated: Death of one J.P.—If a Court of summary jurisdiction states a special case and one justice of the peace dies, the signatures of the two surviving justices are sufficient. (*Marsland* v. *Taggart*, Div. Ct.)

LANCASTER.

Vice-Chancellor of the County Palatine.—As to the tenure of his office, precedence and qualification, see sect. 14 of the Administration of Justice Act, 1928. Sect. 7 of the Chancery of Lancaster Act, 1890, is repealed.

LAND CHARGES.

Very important provisions as to registration are contained in the Land Charges Act, 1925, as amended by sect. 4 and the Schedule of the Law of Property (Amendment) Act, 1926. The existing Rules and Orders under the Act are the Land Charges Rules, 1925 and 1926, the Land Charges Fees Order, 1927 (*infra*), and the Local Land Charges Rules, 1927.

The Act, Rules and Orders will be found in the "Law Notes" Guide to the New Property Statutes, 2nd ed., and Supplement, January, 1929.

Fees.—The Land Charges Fees Order, 1927, came into operation on 1st January, 1928, and introduced a new and lower scale of fees. The fees generally (*e.g.*, for registration, priority notices, entry of satisfaction, personal search) were reduced from 1*s.* 6*d.* to 1*s.*; fees for official searches from 2*s.* to 1*s.* 6*d.*; and the fee for expediting an official search from 5*s.* to 2*s.* 6*d.* Fees are to be prepaid by Land Registry stamp; adhesive stamps can be obtained at head Post Offices. (S. R. & O. 1927, 1185/L. 48.)

LANDLORD AND TENANT.—*And see* AGRICULTURE.

Alteration of user, covenant against.—In leases (except leases of agricultural holdings and mining leases) where alteration of the user of the premises is forbidden unless consent is obtained, if the alteration does not involve any structural alteration of the premises, the Landlord and Tenant Act, 1927, s. 19 (3) implies a proviso that no fine or premium shall be exacted for consent, though the landlord is free to require payment of a reasonable sum in respect of damage to or diminution of the value of the premises (or neighbouring premises of his) and of his expenses connected with the consent.

Apportionment of rent.—The Minister of Agriculture may apportion rent reserved by a lease or any other rent or payment mentioned in sect. 10 of the Inclosure Act, 1854, on the application of any person interested in the rent or any part thereof or in the land, without the concurrence of any other person. (Landlord and Tenant Act, 1927, s. 20.)

For fees payable, see order made by the Ministry on 10th May, 1928. (S. R. & O. 1928, No. 455, price 1*d*.)

Assignment: Assent unreasonably withheld.—A lessor does not act reasonably in refusing assent to an assignment of the lease because the lessee is committing a continuing breach of the covenant to repair, at all events where the amount of disrepair is not very serious. (*Farr* v. *Ginnings*, Clauson, J.)

For observations on the meaning of "unreasonably" in this context, see *Lord Tredegar* v. *Harwood*, H. L.

Assignment, licence for.—In all leases, whenever made, which contain an agreement not to assign, &c. without licence or consent, it is implied, notwithstanding any express provision to the contrary, (1) that licence or consent shall not be unreasonably withheld (but landlord may require reasonable costs), and (2) in case of a lease for more than forty years made in consideration of the erection or substantial improvement of buildings, that no licence or consent shall be required for an assignment, &c. effected more than seven years before the end of the term if written notice is given to the lessor within six months after the assignment, &c. Neither provision applies to leases of agricultural holdings, and provision (2) does not apply to mining leases nor where the lessor is a Government department or local or public authority or a statutory or public utility company. (Landlord and Tenant Act, 1927, s. 19.)

It was held by Maugham, J., in *Gardiner & Co., Ltd.* v. *Cone* that the section is not retrospective so as to prevent a lessor from now forfeiting a lease by reason of an assignment made before the Act in circumstances which would not have constituted a breach of covenant after the Act.

Business premises: Compensation.—Important rights are given to tenants of business premises by Part I. of the Landlord

and Tenant Act, 1927. They are:—(1) A right to compensation for improvements; (2) a right to compensation for goodwill; (3) a right to the grant of a new lease in certain cases.

These rights cannot be taken away by contract, though a contract *for adequate consideration* depriving the tenant of the rights must be given effect to in determining his claim. (Sect. 9.)

Part I. of the Act applies to leases, made before or after the Act, of premises used wholly or partly for carrying on thereat any trade or business, but not to mining leases or leases of agricultural holdings. Premises regularly used for carrying on a profession are within the provisions as to compensation for improvements, but are otherwise outside Part I. of the Act.

For students, the epitome of the Act in Gibson's Conveyancing, 13th ed., pp. 400 to 405, should be sufficient. Practitioners will find the Act fully discussed in "The Landlord and Tenant Act, 1927," by the Editors of "Law Notes," "Law Notes" Publishing Offices, 25 and 26, Chancery Lane, W.C.2, price 6*s.* 6*d.* net.

For Rules under the Act, see the Rules of the Supreme Court (Landlord and Tenant), 1928 (S. R. & O. 1928, No. 165/L. 9, price 2*d.*); the County Court (Landlord and Tenant) Rules, 1928 (S. R. & O. 1928, No. 164/L. 8, price 4*d.*); and Rule 8 of the County Court (No. 2) Rules, 1928. (S. R. & O. 1928, No. 506/L. 18, price 1*d.*) For *fees* in the County Court, see *ante*, p. 75.

For the first two decisions on the Act, see *Solicitors' Journal*, 3rd Nov., 1928, Vol. LXXII. p. 736.

Fair wear and tear.—A testator devised a house and furniture to his widow for life, with a direction that she should keep it "in good repair and condition (reasonable wear and tear excepted)." The widow occupied the house for upwards of forty years and omitted almost entirely to repair it. Her estate was held liable in damages. To bring dilapidations within the protection of "fair wear and tear," it must be shown that the dilapidations were caused by normal human use or the normal action of the elements, and also that they are reasonable in amount having regard to the terms of the direction to repair and the other circumstances of the case. The exception does not mean that a tenant need not do such repairs

as may be required to prevent consequences following originally from reasonable wear and tear but producing others which such wear and tear would not directly produce. (*Haskell* v. *Marlow*, Div. Ct.)

Fine on assignment.—It is "a fine or a benefit in the nature of a fine" within sect. 144 of the Law of Property Act, 1925, for a lessor of a public-house, when asked for leave to assign, to require that the assignee shall agree to the house being "tied" to the lessor. "Fine" is widely defined by sect. 205 (1) (xxiii) of the Act. (*Gardiner & Co., Ltd.* v. *Cone*, Maugham, J.)

Forfeiture: Relief—Non-payment of rent.—Where, after a lessor has recovered judgment for possession for non-payment of rent, the lessee agrees to give up possession of the premises on a certain day in consideration of the lessor withholding the writ of possession, this agreement does not prevent the Court from relieving the lessee from the forfeiture under sect. 46 of the Supreme Court of Judicature (Consolidation) Act, 1925. (*Nance* v. *Naylor*, C. A.)

Improvements, covenant against making.—In all leases, whenever made (not being agricultural or mining leases), which contain an agreement not to make improvements without licence or consent, a proviso is implied, notwithstanding express contrary provision, that such licence or consent is not to be unreasonably withheld, but the lessor can impose certain conditions. (Landlord and Tenant Act, 1927, s. 19.)

Insurance.—If a tenant covenants to insure against fire in a named office or "some other responsible insurance office to be approved by lessor," the lessor can refuse to approve a particular office, even although it is admittedly responsible. (*Lord Tredegar* v. *Harwood*, H. L.)

Notice under L. P. A. 1925, s. 146.—It is sufficient service of a notice under sect. 146 of the Law of Property Act, 1925, if the notice is left on the demised premises with some one other than the lessee, if there are reasonable grounds for supposing that it will be handed to the lessee if possible; it is not necessary that the person with whom it is left should be specifically autho-

rised to accept service. (See sect. 196 (3) of the Law of Property Act, 1925. See, however, sect. 18 (2) of the Landlord and Tenant Act, 1927, *infra*, under REPAIRING COVENANT: FORFEITURE FOR BREACH. (*Cannon Brewery Co., Ltd.* v. *Signal Press, Ltd.*, Humphreys, J.)

Private dwelling-house, covenant to use as.—A covenant to use a house as a private dwelling-house only, "wherein no business of any kind is carried on," prevents the tenant sub-letting in tenement holdings. (*Barton* v. *Keeble*, Eve, J.)

Renewable leases.—Perpetually renewable leaseholds were converted into terms of 2,000 years by the Fifteenth Schedule of the Law of Property Act, 1922. For regulations, see the Renewable Leaseholds Regulations, 1925, (S. R. & O. 1925, No. 857, price 1*d.*) The lease may be deposited at the Central Office. See Filing of Leases Rules, 1925 (S. R. & O. 1925, No. 1128/L. 33, price 2*d.*), and Filing of Leases Fee Order, 1925 (S. R. & O. 1925, No. 1149/L. 35, price 1*d.*)

Repairing covenant: Damages for breach.—By sect. 18 of the Landlord and Tenant Act, 1927, the damages for breach of a covenant to repair or leave in repair are not to exceed the amount (if any) by which the value of the reversion is diminished.

Repairing covenant: Forfeiture for breach.—A lessor, to forfeit for breach of covenant to repair, must show not only that notice was served on the lessee as required by sect. 146 of the Law of Property Act, 1925, but also that the fact of service was known a reasonable time before either to the lessee, or to an underlessee holding under an underlease reserving a nominal reversion only to the lessee, or to the person who last paid the rent either on his own behalf or as agent for the lessee or underlessee. Service by registered post is deemed to be notice until the contrary is proved. (Landlord and Tenant Act, 1927, s. 18 (2).)

LAND REGISTRATION.

The Land Registration Act, 1925, now governs registration of title. The existing Rules and Orders are the Land Registration Rules, 1925 (S. R. & O. 1925, No. 1093/L. 28, price 2*s.* 6*d.* net);

the Land Registration Fee Order, 1925 (S. R. & O. 1925, No. 1122/L. 32, price 3*d.*); the Solicitors' Remuneration (Registered Land) Order, 1925 (S. R. & O. 1926, No. 2/L. 2, price 1*d.*).

The area for compulsory registration now includes, besides London, the County Borough of Eastbourne and (on and after the 1st January, 1929) Hastings, the last-mentioned by S. R. & O. 1928, No. 233/L. 12, price 1*d.*

Completion of purchase: Land Registry's announcement.—The following announcement has been made by the Registry:—

1. There is no occasion for personal attendance at the Registry for the purpose of inspecting the register. The Land Certificate is conclusive evidence of the state of the register up to the date when made to correspond with the register. On application by letter, or preferably in Form 81 (A), an official certificate will be issued without fee stating whether any entry has been made in the register since the date (which should be specified) when the Land Certificate was made to correspond therewith, and, if so, giving an office copy of such entry.

This application must be accompanied by the authority of the registered proprietor or his solicitor to inspect the register.

2. If the official certificate reveals any entries in the register other than those in the Land Certificate, the purchaser is in a position to require the registered proprietor to have them removed, or satisfactorily explained, before he pays the purchase-money. If no such entries are revealed by the official certificate, the transaction may, where the parties have confidence in one another, be safely completed forthwith.

Absolute protection up to the actual moment of completion can be obtained by lodging a priority notice in Form 18 reserving priority for the contemplated instrument which must be lodged within fourteen days thereafter. (Rule 88.)

3. The proprietor of any land or charge, or his solicitor describing himself as such, may apply, or his solicitor may authorise the purchaser to apply, by telegraph or telephone to ascertain on the day of completion whether any entry has been made in the register subsequent to the entries shown in the Land Certificate,

subject if by wire to prepayment of the reply, and if by telephone to confirmation thereof in writing by the Registry. (Rule 293.)

4. Official certificates of search are also issued without fee to persons who, having inspected the register, desire to ascertain whether any entry has been made in the register since the date of their search. Application therefor may be made by letter or preferably in Form 81 (D).

Middlesex deeds: Fees.—These are now to be found in the Land Registry (Middlesex Deeds) Fee Order, 1927 (S. R. & O. 1927, No. 1186/L. 49), which annulled the Order of 1925.

Middlesex deeds: Rules.—The Rules of 1892 and 1914 were superseded by the Land Registry (Middlesex Deeds) Rules, 1926. (S. R. & O. 1926, No. 32/L. 5, price 3*d.*).

LAND TAX.

Collectors, appointment of.—Some amendments have been made in sect. 73 of the Taxes Management Act, 1880, by sect. 33 of the Finance Act, 1928, with regard to the appointment of collectors by the Land Tax Commissioners or Commissioners of Inland Revenue.

LAPWINGS.

The Protection of Lapwings Act, 1928, creates a "close time" from 1st March to 31st August for the bird known as the lapwing, green plover, peesweep, or pewitt and its eggs. During that time it is made a summary offence, punishable with a fine not exceeding 5*l.*, to sell for human consumption or have in possession for the purpose of sale or human consumption the lapwing or its egg. So much of the Wild Birds' Protection Act, 1880, s. 3, as relates to exposing or offering for sale or having in control or possession wild birds recently taken ceases to apply to lapwings.

LAW OF PROPERTY ACTS.

Acts.—The subsisting Acts are:—Parts of the Law of Property Act, 1922, and of the Law of Property (Amendment) Act, 1924, which mainly relate to the enfranchisement of copyholds, the extinguishment of manorial incidents, and the conver-

sion of perpetually renewable leaseholds into long terms of years; the Law of Property Act, 1925, and the Law of Property (Amendment) Acts, 1926, and 1928 (see Addendum following Preface). These Acts, together with the other consolidating Acts into which the Law of Property Act, 1922, was split up, and the Rules and Orders made under the Acts, and the cases reported up to December, 1928, will be found in the "Law Notes" Guide to the New Property Statutes, 2nd ed., and Supplement of January, 1929.

The appendix to Gibson's Conveyancing, 13th ed., contains a discussion of the Transitional Provisions of the Acts in the light of the cases reported to March, 1928.

The decisions on the Acts reported in 1928 include the following:—

Copyholds: Tenant in tail—Undivided share.—A testator, who made his will before 1926 but died afterwards without confirming or re-publishing it and without issue, was entitled before 1926 as tenant in tail in possession to an undivided ninth share in copyholds. Land in the manor was subject to the custom of gavelkind. On his death, his ninth share being converted into personalty by the Law of Property Act, 1925, formed part of his estate and passed under his will. (*Re Price*, Clauson, J.)

Joint tenants subject to a charge.—At the end of 1925, A. and B. were joint tenants in fee simple subject to a charge (created by a lost deed either voluntarily or in consideration of marriage). By virtue of the Law of Property Act, 1925, and the Settled Land Act, 1925, the land became settled land (sect. 1 (1) (v) of the Settled Land Act, 1925), and was not subjected to a trust for sale under sect. 36 of the Law of Property Act, 1925, as settled land is excepted from that section. There is nothing in the context of that section to give to the words "settled land" any other meaning than that given by sect. 205 (1) (xxvi), which defines the words as having the same meaning as in the Settled Land Act, 1925, unless the context otherwise requires. (*Re Gaul and Houlston's Contract*, Clauson, J., and C. A.)

Open space of land.—This case illustrates the meaning of an "open space of land" in para. 2 of Part V. of the 1st Sched.

of the Law of Property Act, 1925. A. was the estate owner of No. 72, White Abbey Road, and the personal representatives of B. were the estate owners of Nos. 74 and 76. At the rear of these houses was a yard and an ashes place situated near the yard, which immediately before the Property Act came into operation were vested in A. and B.'s personal representatives in undivided shares with common rights of user of them. This was an open space and was vested in the Public Trustee on the statutory trusts, which could, however, only be exercised with the leave of the Court. The essential quality of an open space is that it is unbuilt upon, and if an open space in this sense is found (with or without buildings used in common for the purpose of any adjoining land) the provision of Part V. applies. (*Re Bradford City Premises*, Tomlin, J.)

Undivided shares.—Trustees for sale of an aliquot part of land held in undivided shares are "persons interested" within the meaning of the Law of Property Act, 1925, s. 35. (*Re Hayward, Merson* v. *Hayward*, Clauson, J.)

Undivided shares: Transitional provisions.—At the end of 1925 land was vested in a single trustee on trust as to one-half for A. absolutely, and as to the other half on trust for B. for life with remainder to C. At the beginning of 1926 the land remained vested in the trustee on the statutory trusts. The case fell within para. 1 (1) of Part IV. of the 1st Sched. of the Law of Property Act, 1925. Under the Interpretation Act, 1889, s. 1 (1) (b), the plural includes the singular unless a contrary intention appears. Sect. 27 (2) of the Law of Property Act, 1925 (which requires two trustees to receive capital money), does not touch the operation of Part IV. of the 1st Sched. Para. 1 (1) is not confined to the case of persons absolutely entitled. (*Re Myhill, Hull* v. *Myhill*, Astbury, J.)

If land was vested in trustees at the end of 1925 in trust for persons entitled as tenants in common for their lives with remainders over, the case is governed by sub-para. (1) of para. 1 of Part IV. of the 1st Sched. to the Law of Property Act, 1925, not by sub-para. (3). Sub-para. (1) applies although the interests of the tenants in common are not absolute interests. Sub-para. (3)

is intended to cover cases not provided for by the preceding sub-paragraphs, and when a case falls within the first of the sub-paragraphs it is not necessary to consider whether it falls within any of the subsequent paragraphs. Therefore, the trustees held on the statutory trusts, and the land did not vest in the Settled Land Act trustees, or, failing them, in the Public Trustee. (*Re Dawson,* Clauson, J.)

The words "the trustees (if any) of the settlement" in para. 1 (3) of Part IV. of the 1st Sched. of the Law of Property Act, 1925, mean the persons who were the trustees under the old law and not those who are trustees under the new law. Therefore, where there were undivided shares vested in possession at the end of 1925, and the entirety of the land was settled under a will of which there were no Settled Land Act trustees according to the old law, the land vested in the Public Trustee and not in the testator's personal representatives who are trustees under sect. 30 (3) of the Settled Land Act, 1925. (*Re Catchpool, Harris* v. *Catchpool,* Russell, J., applying *Re Ryder and Steadman's Contract,* (1927) 2 Ch. 62.)

On the 31st December, 1925, realty was vested in trustees on trust to divide the income during a certain period among the members of a class, and after the expiration of that period to sell. This was held not to be a case of settled land, but of land held in undivided shares vested in possession. Therefore, it was covered by Part IV. of the 1st Sched. of the Law of Property Act, 1925, and fell within para. 1. This case could not be distinguished from *Re Higgs and May's Contract,* (1927) 2 Ch. 249, with which *Re Frewen,* (1926) Ch. 580, was not necessarily inconsistent. *Re Myhill,* (1928) 1 Ch. 100, and *Re Dawson's S. E.,* (1928) 1 Ch. 421, pointed in the same direction. (*Re Robins, Holland* v. *Gillam,* Tomlin, J.)

By a marriage settlement, the intending wife agreed to convey Blackacre to trustees on trust for herself and her husband for successive life interests, with remainder to the children of the marriage as she should by will appoint. No conveyance of the legal estate was made. By her will, she appointed Blackacre to her two daughters as tenants in common, and died in 1915. The husband's life interest ceased in 1923. The legal estate in

Blackacre was vested in the executors of her will on the statutory trusts for the two daughters under paragraph 1 (1) (b) of Part IV. of the First Schedule of the Law of Property Act, 1925. (*Re Forster, Somerville* v. *Oldfield,* Clauson, J.)

By the will of a testator, who died in 1917, realty was devised to his widow on trust for her use and benefit on condition that the children were properly cared for, and at her decease the property was to be divided among the children. The widow died in 1923, leaving a will, of which X. was sole executrix. Having regard to sect. 31 of the Wills Act, 1837, the widow was legal owner in trust for the persons entitled in undivided shares, and X., as her executrix, was the person in whom (after 1925) the land was vested on the statutory trusts for the children. (*Re Collins, Tower* v. *Collins,* Maugham, J.)

LEGITIMACY.

Legitimation by marriage of parents.—This is provided for by the Legitimacy Act, 1926. The slip in sect. 2 is put right by the Administration of Justice Act, 1928. Sect. 2 referred to the Legitimacy (Declaration) Act, 1858, although that Act was repealed by the Judicature Act, 1925. "Sect. 188 of the Supreme Court of Judicature (Consolidation) Act, 1925," is now substituted for "the Legitimacy (Declaration) Act, 1858," in sect. 2. But the reference to the Act of 1858 in the Schedule of the Legitimacy Act, para. (1) (c), is not put right!

Legitimation petition to be heard in open Court.—A petitioner for legitimation under the Legitimacy Act, 1926, is not entitled to have the petition heard *in camera.* It does not come within the exceptions laid down in *Scott* v. *Scott,* (1913) A. C. 417, so as to permit of it, *per se,* being heard *in camera.* (*Greenway* v. *Attorney-General,* Merrivale, P.)

Procedure in the County Court under the Legitimacy Act, 1926, is regulated by the County Court (Legitimation) Rules, 1927. (S. R. & O. 1927, No. 304/L. 11, price 2*d*.) In the High Court there are no special rules, but the provisions of the Judicature Act, 1925, relating to matrimonial causes, and the Matrimonial Causes Rules, 1924, so far as applicable, extend to

proceedings for legitimacy declarations. (Judicature Act, 1925, s. 188; Rule 96.)

LICENSING.

Alteration of premises.—Where application is made to the licensing justices under sect. 71 of the Licensing (Consolidation) Act, 1910, for their consent to the alteration of licensed premises, the justices, in exercising their discretion, are not limited to a consideration of the matters referred to in the section. (The section requires this consent where the alteration gives increased facilities for drinking, or conceals from observation any part of the premises used for drinking, or affects communication between the part of the premises used for drinking and the other parts of the premises or any street or other public way.) But the justices are not confined to a consideration of these matters in giving or withholding their consent, they were entitled to withhold their approval to certain alterations unless a gateway communicating externally with a public market was bricked up. (*R.* v. *Watford Licensing Justices*, Div. Ct.)

Increased duty: Licensee's right to recover.—Sect. 46 of the Finance (1909—10) Act, 1910 (which gives the licensee of a tied house a right to recover a proportion of the statutory increase of duty, notwithstanding any agreement to the contrary), does not apply to agreements made after the Act. (*R.* v. *Commissioners of Customs and Excise, Ex parte Pegler*, H. L.)

Removal: Refusal of confirmation.—On application to the confirming authority under the Licensing (Consolidation) Act, 1910, for the confirmation of a removal of an old beer house on licence to new premises, the confirming authority can refuse the removal merely on the ground that, unlike the grant of a new licence, it would involve no payment of monopoly value. (*R.* v. *Confirming Committee of the County of Southampton, Ex parte Slade*, C. A.)

Renewal: Condition as to payment to compensation fund.—A compensation authority under the Licensing (Consolidation) Act, 1910, cannot renew a licence which has been objected to on

the ground of redundancy, and make it a condition of the renewal that a payment shall be made to the compensation fund. (*R.* v. *Sheffield Justices*, Div. Ct.)

Servant's unauthorised act.—If a lad employed by the holder of an off-licence as errand boy, but having no authority, express or implied, to supply any part of the stock to customers, supplies a customer with intoxicating liquor during prohibited hours, the licensee is not guilty of an offence under the Licensing Act, 1921, s. 4. The section provides that "no person shall, except during permitted hours, either by himself or by any servant or agent," sell intoxicants. But this does not put the licensee in the position of insuring that no person at all shall sell at unlawful times. (*Adams* v. *Camfoni*, Div. Ct.)

Special removal: Appeal against refusal.—If applicants for a special removal of a licence successfully appeal to quarter sessions against a refusal of the licensing justices to grant the order, the quarter sessions cannot state a case for the opinion of the High Court. The Licensing (Consolidation) Act, 1910, s. 29 (5), makes the decision of quarter sessions final. (*Piper and Others* v. *Marylebone Licensing Justices*, Div. Ct.)

LIEN.

Claim for which made.—A lien is not necessarily lost because too large a sum is at first demanded (C. A.); and see the judgment of Scrutton, L.J. (*Albemarle Supply Co., Ltd.* v. *Hind & Co.*, C. A.)

Hire-purchase agreement.—If A. lets B. a taxi-cab on a hire-purchase agreement providing that B. shall have no authority to pledge A.'s credit for repairs or create a lien on the cab in respect of the repairs, this does not prevent C., a garage proprietor, who is ignorant of the terms of the hire-purchase agreement, from obtaining a lien for repairs. Nor is the lien lost if C. allows B. to take the cab out each day on the understanding that it is to be brought back each day without prejudice to the lien. (*Albemarle Supply Co., Ltd.* v. *Hind & Co.*, C. A.)

LIMITATION OF ACTIONS.

Acknowledgment.—Statements in the balance sheets contained in the notices and reports of a limited company are a sufficient acknowledgment within the Civil Procedure Act, 1833, s. 5, of specialty debts owing by the company. The Act does not require the acknowledgment to be made to the creditor, nor, in the case of a specialty deed, need the acknowledgment amount to a promise to pay. (*Burnham* v. *Atlantic and Pacific Fibre Importing and Manufacturing Co., Ltd.*, Clauson, J.)

Counterclaim.—A cause of action cannot be enforced where it is set up by way of counterclaim if it was already statute-barred at the date of the delivery of the counterclaim, though not at the date of the issue of the writ. (*Lowe* v. *Bentley*, MacKinnon, J.)

LOCAL AUTHORITIES.—*And see* RATING AND VALUATION.

Audit: Appeal.—Any person may appeal from a district auditor who is aggrieved by the auditor's decision on any matter with respect to which he made representations at the audit, or who is aggrieved by a disallowance or surcharge of the auditor. The appeal is to the High Court if the amount involved exceeds 500*l.*, otherwise either to the High Court or the Minister of Health. The Minister's decision will be final, except that he may, and may be made by the High Court to, state a special case on a question of law. Also, a person surcharged, whether he appeals or not, may apply to the High Court or Minister, as the case may be, for a declaration that he acted reasonably or in the belief that his action was authorised by law. The declaration will free him from disqualification, and he may be relieved from personal liability in respect of the surcharge if the Court or Minister thinks that he ought fairly to be excused. (Audit (Local Authorities) Act, 1927, s. 2.)

For the procedure on appeals or applications for a special case under the section, see Rules 59 to 69 of Ord. LVB. of the R. S. C. (R. S. C. (No. 1), 1928. S. R. & O. 1928, No. 198/L. 10, price 2*d.*)

Audit: Disqualification by surcharge.—Any person who at any audit has been surcharged after 31st October, 1927, more than 500*l.* by a district auditor is disqualified for five years from the expiration of the time allowed for appealing or from the failure of the appeal for being elected or appointed or being a member of any local authority, and if he is a member of a local authority his office becomes vacant. (Audit (Local Authorities) Act, 1927, s. 1. For appeal, *see* AUDIT: APPEAL, *supra*.)

Audit: Repeals.—The Audit (Local Authorities) Act, 1927, s. 4, repeals para. 8 of sect. 247 of the Public Health Act, 1875, and in the Poor Law Act, 1927, s. 154 (2) and (3), and sect. 155, except so far as they relate to payment of costs, sect. 157 (1), (2) and (3), and sect. 160 (3).

Audit: Rules and circulars.—The Local Government (Emergency Provisions) Act, 1916, s. 14, having been made permanent by the Expiring Laws Act, 1925, s. 1, various pre-existing Orders have been rescinded *in whole or part*, and in the main consolidated by the Local Authorities (Audit) Order, 1928. (S. R. & O. 1928, No. 177, price 2*d.*)

Ministry of Health circulars were published by the Stationery Office for town councils, urban district councils, and certain joint committees, subject to Government audit. See Circular 869 (price 1*d.*); for parish councils and parish meetings, see Circular 869B (price 1*d.*).

Audit: Surcharge.—Any sum certified by a district auditor to be due is recoverable either summarily or otherwise as a civil debt. (Audit (Local Authorities) Act, 1927, s. 3.)

Borough council: Ministers of religion.—The Ministers of Religion (Removal of Disqualifications) Act, 1925, allows a minister to be a borough councillor.

Elections: Nominations.—It is a fatal defect if a nomination paper of a candidate for election to a rural district council omits the name of the parish for which the candidate is qualified as local government elector. There is a fatal non-compliance with Rule 4 of the Rural District Councillors' Election Order, 1898, which is not cured by Rule 33 of the Order, or by the Ballot

Act, 1872, s. 13. (*Baldwin and Others* v. *Ellis and Others*, Div. Ct.)

Elections: Rules.—See the Local Elections (District Councillors and Guardians Alteration of Rules) Order, 1928. (S. R. & O. 1928, No. 647, price 1*d.*)

Highway: Road maintenance—Tunnel.—The words "costs of the maintenance and repair . . . of such road" in sect. 11 of the Local Government Act, 1888, include the expenses of maintaining and repairing the walls and roof of a tunnel through which the road runs. (*Reigate Corporation* v. *Surrey County Council*, Russell, J.)

Housing.—See the Local Authorities (Assisted Housing Schemes) Amendment Regulations, 1928, dated May 8th, 1928. (S. R. & O. 1928, No. 440, price 1*d.*)

Mental defectives.—A local authority may contract with another local authority to maintain its mental defectives (Mental Deficiency Act, 1927, s. 10 (1)), and also, with certain consents, provide certified institutions both under the Mental Deficiency Act, 1913, and for defective children under the Education Act, 1921, and apportion expenses. (*Ibid.* s. 10 (3).)

Poor law unions: Finance.—Where a poor law union is situated in more than one administrative county or county borough, the county councils concerned formerly contributed certain sums under the Local Government Act, 1888, ss. 24, 34 and 36, in proportion to the total rateable value. The Poor Law Unions (Grants) Order, 1928, brings the system into line with the scheme of the Rating and Valuation Act, 1925, by making the net annual value the basis of computation. (S. R. & O. 1928, No. 163, price 1*d.*)

Powers of local authorities were greatly extended by the Public Health Act, 1925.

Powers: Works.—For the construction of a clause enabling a corporation (Blackpool) to erect certain buildings "and such other conveniences as they deem expedient," see *Att.-Gen.* v. *Blackpool Corporation*, C. A.

Private street works: Burial ground.—A burial ground five miles distant from a synagogue, in whose trustees it is vested, is not "attached" to it within sect. 16 of the Private Street Works Act, 1892, and therefore the trustees are not exempted from liability in respect of the burial ground for the expenses of works under the Act. (*Holy Law South Broughton Burial Board* v. *Failsworth U. D. C.*, Div. Ct.)

Private street works: Justices' jurisdiction.—When a local authority is proposing to execute private street works in respect of an unadopted highway not repairable by the inhabitants at large in accordance with duly prepared plans, specifications and estimates, and a provisional apportionment upon the frontagers, the justices have jurisdiction, on objection by the frontagers, to find that the proposed work is unnecessary. (This case was under the Birmingham Corporation (Consolidation) Act, 1883, the material provisions of which, however, are identical with those of the Private Street Works Act, 1892.) (*Birmingham Corporation* v. *The Mother-General of the Convent of the Sisters of the Charity of St. Paul and Others,* Div. Ct.)

LONDON TRAFFIC.

Loading and unloading vehicles.—Restrictions have been placed on the loading and unloading of vehicles in certain streets adjoining Piccadilly, subject to a penalty of 5*l.* (The London Traffic (Loading and Unloading of Vehicles) Regulations, 1928 (S. R. & O. 1928, No. 443, price 1*d.*).)

Ministry of Transport regulations.—These regulations, made under the London Traffic Act, 1925, s. 10, forbid (1) reversing so as to obstruct traffic; (2) advertising by wearing costume, &c. or driving, &c. any vehicle or animal wholly or partly for advertisement; and (3) carrying "exceptional loads" (roughly anything more than 36 feet long or 8 feet 6 inches wide) between 10 a.m. and 7 p.m. in any scheduled street. These are streets within three miles of Charing Cross, certain congested streets within six miles thereof, and other streets on special occasions (boat race, &c.). Permission to deviate from the provisions may be obtained on application in writing to the Commissioner of Police

of the City of London or of the Metropolis. (S. R. & O. 1928, No. 87, price 2*d.*)

Parking places.—The London Traffic (Parking Places) Regulations, 1928, revoked the regulations of 1925, and specify 88 parking places, as well as giving rules to be observed in their use, subject to a penalty of 5*l.* (S. R. & O. 1928, No. 27, price 6*d.*)

Restricted streets.—See the London Traffic (Restricted Streets) Order, 1928, for streets in which motor omnibuses are restricted. (S. R. & O. 1928, No. 32, price 1*d.*)

LUNACY.

Death: Court's jurisdiction.—An order was made in Lunacy that the receiver should raise a certain sum out of the lunatic's estate for division among the lunatic's creditors. The lunatic died before the order was drawn up. The order was rendered ineffective, for the Lunacy jurisdiction ceased when the lunatic died, and since it might have been varied or rescinded by the Master before it was finally completed, it gave the creditors no equitable charge on the sum in question. The lunatic's executors were entitled to have the assets transferred to them without regard to the order. (*Re Wheater*, C. A.)

Law of Property Act, 1925, s. 171.—The following cases have been decided on this section:—

Re Greene, C. A. Personal property was settled by will on the testator's daughter for life, with a power to appoint to her children, and in default of appointment to the children. Her only two children were lunatics and neither had made a will. Apart from their mother and a lunatic aunt of eighty-two, their nearest relatives were two second cousins, so that if they survived their mother and aunt the Crown would take on their deaths. The mother applied for a settlement under sect. 171, but the Court refused this on the ground that she would not "suffer an injustice" under sub-sect. (1) (c), nor ought the trusts to be altered under sub-sect. (1) (b).

Re Whitworth, C. A. The Court refused to order a settlement of a lunatic's property merely on the ground that the applicants, being too remote relatives, could not succeed to the property on the lunatic dying intestate; to do so would practically be to repeal, in the case of personal property of every lunatic existing on the 1st January, 1926, the alteration in favour of the Crown effected by the new legislation.

Re E. A., C. A. A settlement was ordered to enable the children of a deceased son to benefit under the patient's will, which contained a gift to the children as a class. The patient's family agreed.

Re Fraser, C. A. A settlement was ordered to exclude the patient's father or his family from any claims over funds derived from the will of the patient's maternal grandfather.

Re Wood, C. A. A settlement was ordered to give effect to the contents of a lost will which was shown to have left everything to the patient's wife.

For mode of application, &c. under the section, see the Rules in Lunacy, 1925. (S. R. & O. 1925, No. 1024/L. 27, price 1*d.*)

Percentage and fees.—Rules 126, 127 and 129 of the Rules in Lunacy, 1892, are amended by the Rules in Lunacy (Percentage and Fees), 1927. ("Law Notes," October, 1927, p. 286.)

Personal application fees.—A new rule (129A) prescribes the following fees on application through the Personal Application Department:—(i) On all originating proceedings for the appointment of a Receiver where it is made to appear to the Master that the annual value of the estate to be dealt with (a) does not exceed 50*l.*, 5*s.*; (b) exceeds 50*l.* but does not exceed 100*l.*, 10*s.*; (c) exceeds 100*l.* for the first 100*l.*, 10*s.*; for every additional 50*l.* or any part thereof, 10*s.* (ii) On all subsequent Orders, 5*s.*

The fees on originating proceedings are to be paid on application and on subsequent proceedings on the drawing up of the Order. They are to be paid by impressed judicature stamps and are additional to the fees payable under Rule 129, but include the actual costs of the draft Order and two office copies of the Order. They are not payable by any person exempted from payment of fees under Rule 129 by the last proviso to that Rule. (The Rules

in Lunacy (Personal Application) Fees, 1928. S. R. & O. 1928, No. 18/L. 4, price 1*d*.)

Vesting orders.—As to cases in which Lunacy has concurrent jurisdiction with Chancery in relation to trustees, see sect. 54 of the Trustee Act, 1925, and the Trustee Act (Jurisdiction in Lunacy) Rules, 1925. (S. R. & O. 1925, No. 1249/L. 43, price 1*d*.)

MAINTENANCE (TORT OF).

An action against W. for personal injuries, due to the negligent driving of a vehicle, was maintained by L. An insurance company, which had insured W.'s employees against third party risks (though under no legal obligation to W., and therefore under no legal obligation to do so), took up the case and defended the action on behalf of W. W. failed to recover against L. in an action of maintenance on the technical point that W. had sustained no special damage, since the costs of the defence did not fall on him, and no other damage was alleged. (*Wiggins* v. *Lavy*, C. A.)

McKENNA DUTIES.

The so-called "McKenna duties," imposed by Part I. of the Finance (No. 2) Act, 1915, on imported motor cars, musical instruments, clocks, watches, and cinematograph films, which lapsed on 1st August, 1924, were reimposed by sect. 3 of the Finance Act, 1925, and still continue.

MASTER AND SERVANT.—*See also* NEGLIGENCE *and* WORKMEN'S COMPENSATION.

Commercial traveller.—The employers of a commercial traveller are not justified in repudiating the contract of employment on the ground that he failed to inform them that he had been convicted of a motoring offence and his driving licence had been suspended. (*Hands* v. *Simpson, Fawcett & Co., Ltd.*, Finlay, J.)

Truck Acts: Deduction for bad work.—If a woman textile piece worker is employed at a rate of pay regulated by a standard

list, but subject to a customary contract that if her workmanship is bad or negligent compensation to the employer for damage to his cloth is deducted, this is not a contravention of the Truck Acts. The question is not one of breach of contract, but of contract, the deduction being part of the calculation of the true wage, and not a deduction from a wage already rightly ascertained. (*Hart* v. *Riversdale Mill Co., Ltd.*, C. A.)

MATERNITY HOME.

Any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth are a "maternity home" within the Nursing Homes Registration Act, 1927, by sect. 10 of that Act. (See p. 171, *post*.) Part II. of the Midwives and Maternity Homes Act, 1926, is repealed.

MATRIMONIAL CAUSES.—*See also under* PRIVATE INTERNATIONAL LAW.

Alimony pendente lite.—In a suit for judicial separation an application was made for alimony *pendente lite*, but (owing to no fault of the wife's solicitors) it was not heard until after a decree for judicial separation had been pronounced. It was held that the application could not be heard then; the necessity for this maintenance ceased with the decree, and possibly even there was no jurisdiction then to hear the application. (*M.* (*E. M.*) v. *M.* (*W. N.*), Lord Merrivale, P.)

Collusion.—If, owing to the usual "hotel evidence" in a dissolution suit, the Court considers that some question of collusion arises, the Court can adjourn the hearing for inquiry by the King's Proctor. (*Mackenzie* v. *Mackenzie*, Lord Merrivale, P.)

Condonation.—A wife confessed misconduct to her husband, and both parties signed a separation agreement for a period of six months which recited the confession. After an interval of ten years the husband instituted proceedings for dissolution. The agreement did not constitute condonation. (*Letbe* v. *Letbe and Whitehead*, Lord Merrivale, P.)

Conducing to misconduct.—A wife by refusing marital intercourse may be held to have conduced to her husband's mis-

conduct. In this case, on the special facts, Lord Merrivale, P., granted a decree of dissolution. (*Plows* v. *Plows*.)

Costs against woman respondent.—If a wife presents a petition for dissolution on the ground of her husband's adultery with a named woman respondent, and prays in the petition that such woman respondent be ordered to pay the costs, the Court can make an order for costs against both respondents if the woman respondent knew that the husband was married. It appears from this case that the following instruction was issued on June 4th, 1927:—"Principal Probate Registry, Somerset House.—Divorce —Woman Named.—It is directed by the Senior Registrar that when the prayer of a petition submitted for filing contains a claim for costs against a woman named, the notice will be Appendix I. to the Matrimonial Causes Rules, 1924 (not in the form set out in Appendix Y.), and the woman's name will form part of the title of the suit as a respondent. W. Inderwick, Senior Registrar." (*D.* v. *D. & H.*, Hill, J.)

Costs, husband's liability for wife's.—A husband is not liable at common law for his wife's costs of defending divorce proceedings in which she is found guilty of adultery. A wife guilty of adultery has no authority to bind her husband for such costs, and he is not liable to the wife's solicitors therefor even if they honestly and reasonably believed the wife innocent. The jurisdiction of the Divorce Court to allow costs in such cases where the husband has been ordered to give security stands on a different footing. (*Arnold and Weaver* v. *Amari*, Sankey, J.)

Costs of counsel.—The President has decided that the costs of counsel attending upon any application in Probate and Divorce, not made in open Court, shall not be allowed upon taxation unless a certificate for counsel has been applied for and obtained. This direction came into force in respect of attendances on and after 17th April, 1928.

Costs: Wife's costs of hearing.—A wife, who was respondent to a petition for divorce, admitted adultery but denied that it was committed with the co-respondent named. The Court made an order in respect of the wife's costs of hearing, directing the

registrar to fix sufficient security for any costs that the trial judge might order the husband to pay, but refused to order the husband to make any payment into Court on account of costs. (*S. v. S. and P.*, Lord Merrivale, P.)

Custody of child.—Sect. 193 of the Judicature Act, 1925, does not give the Divorce Court jurisdiction, after a dissolution decree, to make an order as to the custody of a child legitimated under the Legitimacy Act, 1926, but as to whose legitimacy no declaration of legitimacy has been made by the Court. Such an order cannot be made, because it would imply a declaration of legitimacy in a suit in which the child was not represented as party. In virtue of the Court's equitable jurisdiction, however, the Court gave to the petitioner the care and control of the child till further order. (*Green* v. *Green*, Lord Merrivale, P., following the decision of Hill, J., in *Bednall* v. *Bednall*, (1927) P. 225. Subsequently, in *T. M. Jones* v. *E. R. G. Jones* (Hill, J.), the question was raised whether the re-registration of a child under the Legitimacy Act, 1926, precluded the Court from questioning the fact of legitimation. (*The Times* Newspaper, October 20th, 1928.)

District Registry.—Directions were given by the President on January 17th, 1927, as to the procedure on applications for decree absolute or interventions of the King's Proctor in District Registry causes. ("Law Notes," March 1927, p. 74.)

Evidence: Hotel visit.—The Divorce Court will not accept as *primâ facie* evidence of adultery the fact that the husband had resorted to an hotel and stayed the night with a woman unknown. (*Aylward* v. *Aylward*, Lord Merrivale, P.) The petitioner was subsequently allowed to present a fresh petition with a named co-respondent. (*Ibid.*)

Evidence of non-access.—If a wife, who has obtained a maintenance order (but without a non-cohabitation clause) against her husband, subsequently gives birth to a child, the justices cannot discharge the order on the husband's evidence of non-access. This evidence is not admissible owing to the rule in *Russell* v. *Russell*, (1924) A. C. 689. (*Boston* v. *Boston*, Div. Ct.)

Evidence: Secondary evidence.—If substituted service of a petition is effected and the respondents do not appear, the petitioner can give secondary evidence of the contents of letters found in his wife's handbag. As the respondents did not appear no notice to produce could be served, their addresses being unknown. The petitioner was allowed to give his recollection of the contents of the letters. (*Tutt* v. *Tutt and Wood*, Hill, J.)

Expediting hearing.—The Court will not expedite the hearing of a divorce petition on the application of a petitioning wife who desires that the respondent may be free to marry the woman with whom adultery is charged in time to make her child legitimate. This is on grounds of public policy. (*P.* v. *P.*, C. A.)

Hearing in camera.—The Divorce Court will not hear *in camera* an issue arising out of a petition for variation of marriage settlements as to the legitimacy of a putative child. The hearing in open Court would not prevent justice being done, and that was the true test. (*Robertson* v. *Robertson and Bult*, Hill, J.)

Indian and colonial divorces.—As to the power of Indian Courts to dissolve the marriage of British subjects, though domiciled in England or Scotland, see the Indian and Colonial Divorce Jurisdiction Act, 1926, and the Indian (Non-domiciled Parties) Divorce Rules, 1927 (S. R. & O. 1927, No. 698/L. 28, price 2*d*.). Similar jurisdiction may be conferred by Order in Council on the Courts of other parts of His Majesty's dominions (excluding the self-governing dominions). An order has been made as to Kenya—the Kenya Divorce Jurisdiction Order in Council, 1928 (S. R. & O. 1928, No. 635, price 1*d*.).

Intervention by King's Proctor.—Intervention by the King's Proctor in a dissolution suit before decree *nisi* is not limited to cases of suspected collusion. In discharging its duty under the Judicature Act, 1925, s. 178 (1), which is not purely judicial, the Court is entitled to require the services of the King's Proctor. Therefore the Court may by order direct that he should be represented at a hearing of a case adjourned for that purpose, and what part he should take in the proceedings. (*Sloggett* v. *Sloggett*, Lord Merrivale, P.)

Jewish divorce.—The Board of Deputies of British Jews, which is the representative body of the Jews of the British Empire, has brought the following points to the notice of counsel and solicitors who conduct divorce suits on behalf of persons professing the Jewish faith:—

1. Civil divorce in the Courts of the country of domicile is essential before a religious divorce according to traditional Jewish law can be granted, and orthodox Rabbis will not perform the religious ceremony of *remarriage* unless both the civil and religious divorces have been obtained.

2. Some women may have difficulty in obtaining from their civilly-divorced husbands the religious divorce ("Get") and will therefore suffer hardship.

3. The notice of solicitors is directed to these facts so that they may do their utmost to assist the women, whether petitioners or respondents, to obtain the Jewish "Bill of Divorce" at the earliest possible moment.

4. If any difficulty arises in securing the "Get," advice should be immediately sought from the clerk to the "Beth Din" (Court of the Chief Rabbi), Mulberry Street, Commercial Road, E.1, or the Secretary, the Board of Deputies of British Jews, 23, Finsbury Square, E.C.2.

Judicial separation: Residence.—To constitute "residence" for the purpose of applying for a decree of judicial separation, actual habitancy or personal presence within the jurisdiction at the time of the presentation of the petition is not essential. (*Raeburn* v. *Raeburn*, Lord Merrivale, P.)

Judicial separation, right to.—The Divorce Court has no discretion to refuse a decree of judicial separation because it is satisfied that the petitioning wife is abstaining from seeking a decree of dissolution with the object of punishing her husband and the respondent. The Judicature Act, 1925, s. 185, which relates to judicial separation, uses the word "may," and sect. 178, which deals with dissolution, uses the word "shall," but maintenance and custody being part of the purpose for which the suit was brought, the petitioner had a right to the decree. (*Blanchard* v. *Blanchard*, Hill, J.)

Kenya.—See the Kenya (Non-Domiciled Parties) Divorce Rules, 1928. (S. R. & O. 1928, No. 702, price 2*d.*)

Maintenance: Bankruptcy—Separation deed.—The bankruptcy of a husband who has entered into a separation deed is an answer to any claim for the sums due under the deed. But whether or not the husband has been discharged, the wife's common law right to maintenance, which is incidental to her matrimonial status and is not contractual, revives. Nor does the receipt of dividend and the bankrupt's discharge defeat this right; the dividend does not compound anew the common law right of the wife, for it is but an incident of the bankruptcy law. The wife can thus claim maintenance under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925. (*Dewe* v. *Dewe; Snowdon* v. *Snowdon,* Div. Ct.)

Maintenance: Disposable income.—It was settled by *Dayrell-Steyning* v. *Dayrell-Steyning,* (1922) P. 280, that permanent maintenance after divorce should be an apportioned part of the husband's disposable income after payment of tax. But the calculation must be made with reference to the actual disposable income, *i.e.*, the actual income, less sums normally payable for income tax. It is not permissible to allot it, *e.g.*, on the basis that the disposable income is the amount of the income in the year when the calculation is made, less taxes, which, owing to unusually large earnings in previous years, are abnormally large. The Court has a wide discretion with which the Court of Appeal will not lightly interfere. (*Sherwood* v. *Sherwood,* C. A.)

Maintenance: Effect of deed of separation.—A covenant by the wife in a deed of separation not to claim maintenance from the husband, other than that agreed to be paid, does not prevent her from claiming maintenance in the event of a dissolution of the marriage. (*Hyman* v. *Hyman; Hughes* v. *Hughes,* C. A.; *H.* v. *H.*, (1928) W. N. 181, C. A. followed.)

Maintenance: Jewellery.—On the petition of a former wife for permanent maintenance, in estimating the joint incomes, the Court will take into account the fact that the wife possesses a pearl necklace worth 4,000*l.* The value of the necklace must be capitalised and the wife treated as in receipt of income on the amount so found. (*Lysaght* v. *Lysaght,* Lord Merrivale, P.)

Maintenance: Lunacy.—If a receivership order in lunacy is made against a respondent husband, the Divorce Court can make an order for permanent maintenance. The order for maintenance was not to be enforced, however, while an order of 3*l.* a week which had been made by the Lunacy Office remained in force: it would, therefore, only operate if the husband recovered his mental capacity or died. (*C.* v. *C.*, Lord Merrivale, P.)

Maintenance: Remarriage of husband.—A husband, who had been divorced by his wife and whose means had since materially increased, remarried and made an ante-nuptial settlement on his second wife from which the husband benefited by way of a joint establishment. The former wife applied successfully for an increase of permanent maintenance. The husband contended that the settlement had not been impeached in law, that it still subsisted and was valid, and that his means, in fact, had not increased. His Lordship held, however, that although his free income had not increased, practically his income had increased by sharing the advantages of the matrimonial home he had settled on his wife. (*N.* v. *N.*, Lord Merrivale, P.)

Nullity: Effect of prior proceedings.—A petitioner in a suit for nullity is estopped by a decree for restitution obtained against him in a previous suit from denying the validity of the marriage. (*Woodland* v. *Woodland* (*otherwise Belin*), Hill, J.)

Practice: Discharging order for periodical payments.—If the Divorce Court pronounces a decree *nisi*, but no application is made to have the decree made absolute, the husband, against whom an order has been made for periodical payments, should apply for an order suspending or discharging such order by motion. This procedure is not excluded by rule 70 of the Matrimonial Causes Rules, 1924, and see sect. 196, Judicature Act, 1925. (*Skipwith* v. *Skipwith*, C. A.)

Separation agreement: Justices' jurisdiction.—Under an agreement for separation a wife undertook not by any means whatever to compel her husband to allow her any alimony other than the sum of 17*s.* 6*d.* stipulated for in the agreement. The husband failed to make the payments. It was held that the

justices still had jurisdiction to make an order—certainly up to 17*s.* 6*d.* (*McCreanney* v. *McCreanney*, Div. Ct.)

Separation and maintenance orders.—The Summary Jurisdiction (Separation and Maintenance) Act, 1925, contains some noteworthy features. (a) It extends the grounds on which orders can be made. (b) It contains fresh provisions as to the effect on orders of resumption of cohabitation. (c) The rule that adultery terminates the order is modified. (d) Persons liable to make payments under an order are required to notify change of address. (e) Power is given to make interim orders for maintenance pending an adjournment of the application for a separation order.

Summary jurisdiction: Constitution of Court.—If a maintenance order was made at a hearing before four justices and adjourned with a view to a settlement, and at the adjourned hearing two justices were present but only one of them was present at the first hearing, the proceedings are null and void. The Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, provide that two justices must hear the case. (*Lewis* v. *Lewis*, Div. Ct.)

Summary jurisdiction: Ground of complaint.—On an application by a wife for a maintenance order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, she can rely on more than one ground of complaint on the same summons, *e.g.*, she may base her claim to an order on persistent cruelty and also on wilful neglect to maintain. (*Tyrrell* v. *Tyrrell*, Div. Ct.)

Summary jurisdiction: Time for proceedings.—A husband who seeks rescission of a separation order on the ground of his wife's subsequent adultery must apply within six months of the alleged act of adultery, or within six months of his knowledge or means of acquiring knowledge of the alleged adultery. (*Dutch* v. *Dutch*, Div. Ct.)

Summary jurisdiction: Wife's costs on appeal from justices.—When a wife's summons under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, claiming maintenance from her husband is dismissed by the justices, and the

wife appeals to the Probate, Divorce and Admiralty Division, she cannot obtain security from her husband for the costs of the appeal. *Sirrell* v. *Sirrell,* (1911) P. 38, deciding that had the wife been successful before the justices the husband could be required to give security if he appealed, has no application where the order appealed from is adverse to the wife. (*Fletcher* v. *Fletcher*, Lord Merrivale, P.; see 46 L. N. (1927) 258.)

MECHANICAL LIGHTERS.

Duty.—As from the 28th day of April, 1928, a customs duty of 6*d*. is payable on any mechanical lighter imported into the United Kingdom and on any component part of a mechanical lighter other than a flint. An excise duty of 6*d*. is also payable on every mechanical lighter manufactured in the United Kingdom which is complete or which could be made complete by the addition of a flint, and on every mechanical lighter sent out in an incomplete state from the premises of a manufacturer of mechanical lighters. "Mechanical lighter" means any mechanical or chemical contrivance which is portable and is intended for producing a spark or flame, whether by itself or when brought into contact with gas. (Finance Act, 1928, s. 6.) The Mechanical Lighters Regulations, 1928, made under this section, enact that no person shall carry on the business of a manufacturer of lighters (including the assembling of parts of lighters, whether to form complete lighters or not) at any premises unless he is the holder of an Excise licence issued in accordance with those Regulations, which also prescribe rules to facilitate and enforce the collection and payment of the duty now imposed. (S. R. & O. 1928, No. 616, price 1*d*.)

[A duty was imposed on mechanical lighters by sect. 10 of the Finance Act, 1916, but the duty was taken off by sect. 5 of the Finance Act, 1921.]

MEDICAL ACTS.

The Medical and Dentists Acts Amendment Act, 1927, confirmed an agreement (contained in Sched. I.) between Great Britain, the Irish Free State and Northern Ireland for the

registration and control of medical practitioners and slightly amended the Medical Acts.

MENTAL DEFICIENCY.—*See also* LOCAL AUTHORITIES.

New definitions of mental defectives (including idiots, imbeciles, feeble-minded persons, and moral defectives) are given in the Mental Deficiency Act, 1927, s. 1, in place of those contained in the Act of 1913. Sects. 2, 4, 6, 8, 11, 22 and 30, 29 and 44 of that Act are also amended.

Notification of children.—The Mental Deficiency (Notification of Children) Regulations, 1914, have been repealed by the Mental Deficiency (Notification of Children) Regulations, 1928, which provide for the certification and instruction of children seven years of age and upwards who are deficient. (S. R. & O. 1928, No. 659, price 1*d.*)

MERCHANDISE MARKS.

The Merchandise Marks Act, 1926, required an indication of origin to be given in case of certain imported goods. Its principal provisions and the orders made under it are:—

Advertisements and samples.—Any advertisements or samples of goods to which an Order in Council under the Act applies must indicate the origin of the goods. (Sect. 5 (2) (4).)

Application.—The Tanganyika Territory, the British Cameroons, British Togoland, and the territories of South West Africa, New Guinea and Western Samoa (all mandated territories), are to be included in His Majesty's Dominions for the purposes of the Merchandise Marks Act, 1926. (Merchandise Marks (Mandated Territories) Order, 1928. S. R. & O. 1928, No. 249, price 1*d.*) The power given in sect. 13 (4) has been exercised as to the Isle of Man. (S. R. & O. 1927, No. 505, price 1*d.*)

Imported goods.—Sect. 2 of the Act enables Orders in Council to be made, after enquiry, requiring an indication of origin in the case of the goods therein specified. The following Orders in Council have been made. The Merchandise Marks (Imported Goods) Order, 1927 (S. R. & O. 1927, No. 1203, price 2*d.*), and three Orders in 1928:—No. 1 (S. R. & O. 1928,

No. 569, price 1*d.*), No. 2 (No. 570, price 2*d.*), and No. 3 (No. 571, price 1*d.*). These four Orders require the following goods to be marked on all retail sale; some goods must be marked on all exposure for sale, wholesale whether by a wholesaler or not, others only if the exposure for sale is by a wholesaler. Goods need not be marked at the time of importation except where stated. The more important variations are indicated below. The Orders specify the required marks:—

Apples.—It is unlawful to import or to sell or expose for sale more than 14lbs. of imported fresh apples unless their container bears the prescribed mark on sale wholesale, or on exposure for sale by retail their origin is indicated by means of a show-ticket, clearly visible to intending purchasers, in letters not less than half an inch in height. This applies to all exposure for sale wholesale. (No. 3 Order, 1928.)

Baths.—Cast-iron porcelain-enamelled baths, and also their containers, must be marked. This also applies to all exposure for sale wholesale. (No. 2 Order, 1928.)

Boots, including boots, shoes and slippers. The indication of origin must be stamped or impressed on the outer surface of the sole or, in cases where it is not practicable so to apply the indication, by means of a label securely affixed to the outer surface of the sole. The Order does not apply to boots, shoes or slippers made wholly or mainly of rubber or to boots, shoes or slippers made of canvas with rubber soles where the soles are not stitched to the uppers. The Order applies to wholesale sales only if the person exposing the goods is *not* a wholesaler. The goods need *not* be marked at the time of importation. (No. 1 Order, 1928.)

Buckles for a brace or belt other than buckles actually attached to a brace or belt. (1927 Order.)

Cables.—Insulated electric cables or wires may not be sold or imported unless the origin is indicated in the prescribed manner. This applies to all sale or exposure for sale wholesale, but does not apply to any cable or wire forming part of or accessory to another article when imported. (No. 2 Order, 1928.)

Electric lamps. (No. 2 Order, 1928.)

Felt hats and felt hat hoods. (1927 Order.)

Furniture, including furniture or cabinet ware made wholly or mainly of wood, upholstered furniture or frames therefor or such cabinets and wooden trays as are customarily sold through the furniture trade, including any such furniture or cabinet ware which was imported in parts, unless it bears an indication of origin. This does not apply to bread platters, pastry boards, wash boards, spoons and forks, clothes pegs, skewers and similar articles of domestic wood ware or to toys or such fancy articles (including any such goods commonly known as oriental goods), as are customarily sold through the fancy goods trade and not through the furniture trade, or articles made wholly or mainly of cane or wicker work. This applies to all exposure for sale wholesale. (No. 1 Order, 1928.)

Gloves, and also material for gloves. One glove in each pair must be marked. The Order only applies to exposure for sale wholesale if the person exposing the goods is *not* a wholesale dealer. (No. 1 Order, 1928.)

Glue and gelatine, including glue size. Special provision is made for blends of glue. The Order only applies to sale of 14lbs. or over but applies to all exposure for sale wholesale. (No. 2 Order, 1928.)

Gold and silver leaf. (1927 Order.)

Honey and blends of honey. (No. 3 Order, 1928.)

Metal fittings and furniture.—This includes cabinet furniture of metal, but not locks. (1927 Order.) An amending Order of 1928 (S. R. & O. 1928, No. 589, price 1*d*.) excluded small articles and those ornamental in character which it is not practically possible to mark provided that they are exposed for sale only in a conspicuously marked container.

Mill bobbins. (1927 Order.)

Mowing machines, of the rotary blade type. (No. 1 Order, 1928.)

Pottery.—Both sale and importation are forbidden. The Order applies to—(a) The following articles of china or translucent pottery (including pottery known as china or porcelain), general earthenware or semi-porcelain (excluding terra-cotta ware, stone

ware, and red and brown pottery), jet, rockingham or samian—(i) articles commonly used in connection with the serving of food or drink; (ii) kitchen ware and utensils; (iii) bedroom and other toilet ware; (iv) heraldic and souvenir ware, including ware bearing any heraldic or similar device or any motto or monogram or any picture of a place in the United Kingdom or any phrase in the English language; (b) (i) Floor tiles for tesselated pavements; (ii) glazed wall and hearth tiles; (c) (i) Sanitary earthenware, white or cane and white; (ii) enamelled sanitary ware of fireclay; (iii) other sanitary ware (not including drain pipes).

The indication of origin is to be stamped, printed, embossed or impressed on each article indelibly except that the lid or cover accompanying a pot, bowl or dish need not be marked where the pot, bowl or dish itself bears an indication of origin.

This does not extend to any article (not being heraldic or souvenir ware) which is—(a) an object of art, whether antique or not, wholly or mainly for ornamental use; (b) a toy; (c) a subsidiary part of a composite article in which the pottery is united with other material; (d) pottery for mounting, *i.e.*, pottery made for the purpose of being united with other material so as to form a composite article.

The goods must bear the indication of origin on all exposures for sale wholesale. The Order does not apply to pottery imported before 13th January, 1929. (No. 2 Order, 1928.)

Shuttles for use in looms for weaving textile fabrics. (No. 1 Order, 1928.)

Tooth brushes and shaving brushes.—Each brush sold and also their containers, must be marked in the prescribed manner. This applies to all exposure for sale wholesale, but the brushes need not be marked at the time of importation. (No. 2 Order, 1928.)

Tyres and tubes, including all tyres and tubes for motors, motor cycles and cycles, but not for tyring perambulators not exceeding 12 inches in diameter. This applies to all exposure for sale wholesale, and these goods must be marked at the time of importation. (1927 Order.)

Water taps in brass and certain other brass water fittings. (1927 Order.)

Wire, including barbed wire on reels, wire nails, wire in coils, and baling wire cut and looped at one end or both. Only applies to quantities of 14 lbs. (1927 Order.)

Woven labels. (1927 Order.)

Zinc sheets.—The application is to sales of more than six enamelled zinc sheets of the kind used for covering walls and ceilings. The sheets or their containers must bear the prescribed indication of origin on all exposure for sale wholesale. (No. 2 Order, 1928.)

Imported goods bearing British mark.—No imported goods bearing the name or trade mark of a British manufacturer or trader may be sold or distributed as an advertisement unless accompanied by an indication of origin. (Sect. 1.) The Board of Trade has exercised a power given by the section to exempt—Petroleum and Liquid Products thereof (S. R. & O. 1927, No. 432), Uncompounded Drugs (*Ibid.* No. 628), and Farm and Garden Seeds. (*Ibid.* No. 758.)

Offences and penalties.—Offences against the Act or any Order in Council made under it are (by sect. 5) punishable as offences under the Merchandise Marks Act, 1887. An employer or principal may free himself from liability under the Act if he gives three days' notice to the prosecution of his intention to have any other person whom he charges as the actual offender before the Court at the hearing. (Sect. 6.)

Tea.—Tea has been excluded from the definition of foodstuffs in the Merchandise Marks Act, 1926, s. 10 (1). (S. R. & O. 1928, No. 621, price 1*d.*)

MIDWIVES.

Roll of midwives.—The Midwives Act, 1926, provides for the keeping of a roll of midwives, and for the authorising of midwives badges. It amends the Midwives Acts, 1902 and 1918 in various respects.

MINES.

Aerial ropeway.—The Railway and Canal Commission under the Mines (Working Facilities and Support) Act, 1923, can

authorise a colliery company to send their coal to the nearest port by means of an aerial ropeway in order to save cost of conveyance. It is in the national interest that coal should be made available for national purposes, and where the operation of rendering the coal available is hampered by the refusal of persons whose consent before the Act was necessary to grant proper facilities, the Act gives the Commission power to override that refusal and grant ancillary rights on proper terms. (*Re Tilmanstone (Kent) Collieries, Ltd.*, C. A.)

Checkweigher.—A checkweigher appointed by a majority of the persons employed in the mine, and paid according to the mineral gotten, is entitled to payment of a proportionate part of his wages from all persons so employed. It is no defence to a claim by the checkweigher against any one of those persons that another checkweigher has been appointed during the material period by ballot, but not by a majority as aforesaid, to act as checkweigher on his behalf.

A notice convening a meeting to appoint a checkweigher addressed to part only of those entitled to appoint is bad, and the appointment of a person chosen by the subsequent meeting is invalid. (*Bell and Another* v. *Bennett*, Div. Ct.)

MONEY PAID UNDER MENACES.

A member of a trade association had, by breach of the rules thereof, incurred liability to be placed on the association's stop list, but was allowed to compromise the matter by a money payment. He could not afterwards recover the payment. Putting the plaintiff on the stop list was a lawful act, and there was no reason why an agreement should not be made to abstain from that act if the plaintiff did what was also a lawful act, viz., make a money payment. The defendants were not guilty of demanding money with menaces and without reasonable and probable cause. *R.* v. *Denyer*, (1926) 2 K. B. 258, was wrongly decided it was said. (*Hardie and Lane, Ltd.* v. *Chilton*, C. A.)

MONEYLENDERS.

Act of 1927.—Important provisions are contained in the Moneylenders Act, 1927. *Inter alia*, (1) it repeals the provisions

of the Moneylenders Act, 1900, as to registration, and requires a moneylender to take out an annual excise licence (expiring 31st July) for each address at which he carries on business, to get which licence he must be holding a certificate granted by a petty sessional Court or (in the metropolitan police district) a police magistrate (sects. 1 and 2; and see Moneylenders (Summary Jurisdiction) Rules, 1927, 9th September, 1927, as to applications for the certificate); (2) it stringently restricts advertisements and prohibits the employment of agents and canvassers (sect. 5; *see* AGENT OR CANVASSER, *infra*); (3) it makes a contract for a loan or a security unenforceable unless the borrower has signed a note of the contract before the money was lent or the security was given (sect. 6); (4) a rate of interest over 48 per cent. is to be deemed excessive unless the contrary is proved (sect. 10; see *Verner-Jeffreys* v. *Pinto*); (5) actions to recover loans made after 1927 or enforce securities taken after 1927 are subject to a time limit of twelve months (sect. 13); (6) the Moneylenders Act, 1911, is repealed but substantially re-enacted. (Sect. 17.)

Agent or canvasser.—Sect. 5 (3) of the Moneylenders Act, 1927, provides that no person shall act as agent or canvasser for introducing clients to a moneylender. This section has been held not to apply where a person so acts without the authority or mandate of the moneylender by whom the loan is made. (*Verner-Jeffreys* v. *Pinto*, C. A.)

Bankruptcy: Moneylender's petition.—Sect. 9 (2) of the Moneylenders Act, 1927, applies to a debt due under a contract entered into before the Act. Therefore, the affidavit verifying a moneylender's petition in bankruptcy must be accompanied by the statement required by the section, even though the contract was entered into before the Act. (*Re a Debtor*, No. 99 of 1928, C. A.)

Bodies corporate.—See the Moneylenders (Body Corporate) Regulations, 1927, for the rules about applications to the Board of Trade by bodies corporate for exemption from the Moneylenders Act, 1927. (S. R. & O. 1927, No. 1151, price 1*d*.)

County Court Rules.—See the County Court (No. 2) Rules, 1927 (S. R. & O. 1927, No. 1152/L. 45), which by Rule (2) insert a new Rule 5A in Ord. VI., giving the particulars which a moneylender must state when seeking to recover money lent or interest, &c., and by Rule (3) insert a proviso (d) in Ord. VII. r. 29B, preventing the issue of a default summons by moneylenders.

Local Courts.—By sect. 11 (1) of the Moneylenders Act, 1927, a moneylender cannot sue in an inferior Court (other than a County Court) unless the jurisdiction of that Court is preserved by Order in Council. The jurisdiction of the following Courts has been preserved:—The Mayors' and City of London Court, The Court of Passage of the City of Liverpool, the Salford Hundred Court of Record, the Derby Borough Court of Record. (The Moneylenders (Local Courts) Order, 1927. S. R. & O. 1927, No. 1170/L. 50, price 1*d.*)

Provisional Rules were made for the Liverpool Court of Passage (S. R. & O. 1928, No. 1/L. 1, price 1*d.*) and for the Salford Hundred Court. (S. R. & O. 1928, No. 2/L. 2, price 2*d.*)

MORTGAGE.

Bankruptcy: Redemption by trustee.—A mother lent her son money on mortgage of certain property. The mortgage recited that she had agreed to lend him 1,650*l.* on the terms that, as soon as the deed was executed, he should pay her a bonus of 1,000*l.*, and that she should pay him 1,010*l.*, keeping out of it the sum of 1,000*l.* to meet the bonus, and that she should pay him the remaining 640*l.* by certain instalments. The deed provided that, if during her life he was not adjudicated bankrupt, he should only be liable to repay the 640*l.*; but that, if he was adjudicated bankrupt, she should be entitled as against his trustee in bankruptcy to recover the whole 1,650*l.* with 5 per cent. interest. Held that the bargain was bad as being in violation of the bankruptcy laws, and that the son's trustee in bankruptcy could redeem the property on repaying the money actually advanced with 5 per cent. interest. (*Re Johns, Worrell* v. *Johns*, Tomlin, J. *Ex parte Mackay* (1873), L. R. 8 Ch. 643; *Ex parte Williams* (1878), 7 Ch. D. 138, applied.)

Personalty: Time to redeem.—In 1900 A. mortgaged shares in a company to B. to secure a loan. A. paid no interest, but B. received the dividends which by 1921 were sufficient to pay off principal as well as interest. In 1926 A. claimed to redeem the shares and issued an originating summons for redemption and repayment of dividends received after 1921. It was held that he was entitled to redeem. No Statute of Limitations bars the right to redeem personalty, and there had been no such delay on his part as to render redemption inequitable. But the relief obtainable under Ord. LV. r. 5A, does not include a personal order for payment against a mortgagee so that to obtain a refund of the dividends a writ would have to be issued. (*Weld* v. *Petre*, C. A.)

MORTMAIN.

The Racecourse Betting Control Board may hold land. (Racecourse Betting Act, 1928, s. 2, *ante*, p. 101.)

MOTORS.—*And see* ROAD TRANSPORT.

Articulated motor vehicles.—*See* TRAILER, *infra*.

Duty.—New rates of duty are payable as from the 1st January, 1929, instead of those set out in paras. 3 and 5 of the 2nd Sched. of the Finance Act, 1920. (Finance Act, 1928, s. 12, Sched. III. *See also* TRAILER, *infra*.)

Electrically-driven vehicle.—A vehicle propelled by electricity generated by an internal combustion engine on the vehicle is not an electrically propelled vehicle within the meaning of the Finance Act, 1926, Sched. I. clause 5, and is not entitled to a licence at the lower rate applicable to electrically driven vehicles. (*Tilling-Stevens Motors, Ltd.* v. *Kent County Council and Another*, C. A.)

Heavy motor cars: Mirror.—Every heavy motor car used on any highway must have a suitable mirror so affixed as to enable the driver to "become aware of the presence in the rear thereof of any other vehicle," the driver of which wants to pass the heavy motor car. Heavy motor cars carrying a second person who can see what is coming up are excepted if the other person has "an

efficient means of " communication with the driver. (The Heavy Motor Car (Amendment) Order, 1928. S. R. & O. 1928, No. 614, price 1*d*.)

Heavy motor cars: Speed.—Art. VII. of the Heavy Motor Car Order, 1904 (S. R. & O. 1904, No. 1809, p. 522), has been replaced by the Heavy Motor Car (Amendment) Order, 1928 (S. R. & O. 1928, No. 614, price 1*d*.). The new speeds are:—

(a) if all the wheels are fitted with pneumatic tyres, 20 m.p.h.

(b) if some or all of the wheels are not fitted with pneumatic tyres, but all the wheels not so fitted are fitted with tyres made of soft or elastic material, 12 m.p.h.

(c) if some or all of the wheels of the heavy motor car are not fitted with either pneumatic tyres or tyres made of soft or elastic material, and the weight of the heavy motor car unladen does not exceed 3 tons, and the registered axle weight of no axle thereof exceeds 6 tons, 8 m.p.h.

(d) in any other case, 5 m.p.h.

The speeds at which a heavy motor car drawing a trailer may be driven are:—

(a) where the trailer is so constructed and by partial superimposition attached to a heavy motor car that a substantial part of the weight of the trailer is at all times borne by the heavy motor car, and all the wheels of the heavy motor car and of the trailer are fitted with pneumatic tyres or tyres made of soft or elastic material, 12 m.p.h.;

(b) where the trailer is not so attached as aforesaid,

(i) if all the wheels of the heavy motor car and of the trailer are fitted with pneumatic tyres, 12 m.p.h.,

(ii) if some or all of the wheels of the heavy motor car and of the trailer are not fitted with pneumatic tyres, but all the wheels not so fitted are fitted with tyres made of soft or elastic material, 8 m.p.h.;

(c) in any other case, 5 m.p.h.

A tyre is deemed to be pneumatic if:—(i) it is provided with a continuous closed chamber containing air at a pressure substantially exceeding atmospheric pressure when the tyre is in the

condition in which it is normally used, but is not subjected to any load, (ii) it is capable of being inflated and deflated by the driver of the vehicle without removal from the wheel or vehicle, and (iii) it is such that when it is deflated and is subjected to a normal load the sides of the tyre collapse.

Identification marks: Illumination.—By the Road Vehicles (Registration and Licensing) Amendment Regulations, 1928, dated June 12th, 1928, made by the Minister of Transport (a Provisional Rule, price 1*d.*), the Road Vehicles (Registration and Licensing) Regulations, 1924 (S. R. & O. 1924, No. 1462), were modified by substituting the following Regulation for Regulation 26:—

26.—(1) Whenever during the hours of darkness as defined by sub-sect. (4) of sect. 1 of the Road Transport Lighting Act, 1927, a vehicle is upon a public road, a lamp shall be kept burning on the vehicle, so contrived as to illuminate by means of reflection, transparency, or otherwise, and render easily distinguishable every letter and figure of the identification mark exhibited on the back of the vehicle or on the rearmost vehicle attached to the back of the vehicle, as the case may be. (2) In the application of this Regulation to a motor tricycle or a motor bicycle of a weight unladen not exceeding three hundredweights, the plate fixed on the front of the vehicle may, if desired, be substituted for the plate fixed on the back of the vehicle.

Motor bus: Plying for hire.—A motor bus plies for hire, within the Metropolitan Public Carriage Act, 1869, s. 7, if, after the journey has begun, persons are solicited and allowed to take tickets entitling them to be carried as passengers, at offices on the route served, at any time up to ten minutes before the arrival of the bus. There is in these circumstances no "antecedent contract" within the decision in *Sales* v. *Lake*, (1922) 1 K. B. 533. (*Greyhound Motors, Ltd.* v. *Lambert*, Div. Ct.)

There was a plying for hire within the Towns Police Clauses Act, 1847, s. 45, where tickets were purchased for a journey not in the presence of the motor bus by which passengers were to travel, and before the allocation of any particular motor bus for

the journey. (*Griffin* v. *Grey Coaches, Ltd. and Another*, Div. Ct.)

Part year licensing.—The Road Vehicles (Part Year Licensing) Order, 1924 (S. R. & O. 1924, No. 1245, p. 1644), was amended by the substitution of a new sub-paragraph (ii) of subdivision (b) of paragraph 4, as follows:—

"(ii) A licence may be taken out for any period less than a year, but greater than one quarterly period expiring on the 31st day of December in any year, and the duty payable upon such licence shall be the total of an amount calculated at the rate of one-twelfth of the full annual rate of duty for each month or part of a month included in the period, and a further amount calculated at the rate of 5 per cent. upon the amount so ascertained as aforesaid, a resultant fraction of a penny being reckoned as one penny." (The Road Vehicles (Part Year Licensing) (Amendment) Order, 1928 (S. R. & O. 1928, No. 38, price 1*d*.).)

Trailer: Brake.—A motor was drawing a trailer. The trailer was fitted with the required brake which could be applied by the driver of the motor. But the motor brakes and the trailer brake were not interconnected, and it was impossible for the driver to apply both brakes of the motor and the brake of the trailer at the same time without losing control of the steering wheel. There was no other man on the motor or the trailer. An offence was thereby committed under Article III. (3) of the Motor Car (Use and Construction) Order, 1924. (*Robinsons, Ltd.* v. *Richards*, Div. Ct.)

Trailer: Duty.—Where a mechanically-propelled vehicle used for drawing a trailer has the trailer attached to it by partial superimposition, the vehicle and trailer are, as from the 1st January, 1929, to be treated for duty purposes as if they formed a single vehicle and that vehicle were a vehicle used for drawing a trailer. (Finance Act, 1928, s. 13.)

NATIONAL DEBT.

Perpetuity and accumulations.—The Superannuation and Other Trust Funds (Validation) Act, 1927, s. 9, enables funds to

be given and the income thereof to be accumulated for any period for the reduction of the National Debt, subject to the veto of the Treasury. Such gifts are exempted from income tax, estate and stamp duties by sect. 30 of the Finance Act, 1928.

Sinking Fund.—The provisions of sect. 32 of the Finance Act, 1923, as to the New Sinking Fund (1923) and the annual charges for the National Debt, have been superseded by fresh provisions. See sects. 23 and 24 of the Finance Act, 1928.

Victory Bonds and Funding Loans.—The interest on these when held by the National Debt Commissioners is not to be paid. (Finance Act, 1928, s. 26.)

NATIONAL HEALTH INSURANCE.

Arrears.—See National Health Insurance Arrears, Amendment Regulations, 1928. (S. R. & O. 1928, No. 160, price 2*d*.)

Exempt persons.—Regulations as to these were published as S. R. & O. 1928, No. 270, price 4*d*.

Insurance Committees.—By the National Health Insurance (Insurance Committees) Amendment Regulations, 1928, the term of office of persons who were members of an Insurance Committee on the 4th September, 1928, was (subject to the provisions of any Regulations which the Minister of Health may hereafter make determining or further extending the term of office of any member or members or of any class or classes of members of the Committee) extended to the 31st day of October, 1929. (S. R. & O. 1928, No. 319, price 1*d*.)

National Health Insurance Act, 1928.—This Act contains important amendments of the National Health Insurance Act, 1924. It is too long and too detailed for a summary to be useful.

Reserve and transfer values.—See the National Health Insurance (Reserve and Transfer Values) Regulations, 1928. (S. R. & O. 1928, No. 403, price 3*d*.)

Sheriff's bailiff.—The sheriff's bailiff is not insurable under the National Health Insurance Act, 1924. He is not employed

by the sheriff under any contract of service, but holds an office under the Crown; nor does the sheriff carry on a trade or business. (*Re the High Sheriff of Hertfordshire,* Roche, J.)

Voluntary contributors.—See the National Health Insurance and Contributory Pensions (Voluntary Contributors) Amendment Regulations, 1928. (S. R. & O. 1928, No. 677, price 2*d.*)

NAVAL PRIZE.

The Naval Prize Act, 1928, has made provision for winding up the Naval Prize Fund, and for the dissolution of the tribunal established under the Naval Prize Act, 1918.

NEGLIGENCE.

Ancient wall.—Part of the ancient wall of the City of Exeter, which was vested in B., fell and destroyed an inn belonging to A. B. was not held liable (1) since there was no unnatural or abnormal use of his land bringing the case within *Rylands* v. *Fletcher,* L. R. 3 H. L. 330, and (2) there was no evidence that B. had knowledge of the defect causing the subsidence or was to blame for having failed to discover it. (*St. Anne's Well Brewery Co.* v. *Roberts,* C. A.)

Horses.—Knowledge of a propensity to bite other horses is not sufficient evidence of knowledge of a propensity to bite human beings to enable a person who has been bitten by a horse to recover damages from the owner if the defendant had no further knowledge showing the horse likely to bite mankind and had not been guilty of negligence. (*Glanville* v. *Sutton & Co., Ltd.*, Div. Ct.)

Joint enterprise.—A tenant of a shop arranged with her landlord, who resided in adjoining premises, to visit the shop from time to time at night and see that all was secure. The lodger of the landlord, having noticed a smell of gas coming from the shop, informed the landlord, and the two proceeded to make investigation. As a result of the lodger's negligence an explosion followed, and the tenant's goods were injured. It was held that assuming the evidence sufficiently establishes the case against him, the landlord could be held liable (1) on the ground that the lodger

was his agent, (2) that the landlord was in control, or (3) (per Talbot, J.) on the ground that the landlord, having undertaken the duty of inspection, was bound to see that reasonable care was used in the inspection, whether he made it himself or got another to do it for him. (*Brook* v. *Boole*, Div. Ct.)

Master and servant.—Where the owner of a car authorises a servant to use the car for the servant's own purposes, he is not liable for injuries caused by the servant's negligent driving while using the car as aforesaid. The servant is not acting as servant at the time, and is not at the time doing the class of acts he is employed to do. (*Britt* v. *Galmoye and Nevill*, Shearman, J.)

Notice exempting defendants from liability.—A notice exempting the defendants from liability for injury caused to a person whilst availing himself of the facilities and assistance of the defendants' servants, will, if it has come to the notice of the plaintiff, relieve the defendants of liability for their servants negligence, although the plaintiff was compelled to act (regulate a barge entering the defendants' docks) according to directions of those servants. This compulsion is not necessarily inconsistent with availing himself of the facilities and assistance of the defendants. (*Wickett* v. *Port of London Authority*, Avory, J.)

NIGERIA PROTECTORATE.

Admiralty jurisdiction.—The Supreme Court of Nigeria was constituted a Court of Admiralty within the Protectorate of Nigeria by Order in Council, to take effect from the date of publication in the *Nigeria Gazette* (30th August, 1928). (S. R. & O. 1928, No. 661, price 1*d.*)

NOTARY PUBLIC.

Welsh notaries.—Rules were made on the 23rd December, 1924, as to the admission of notaries to practise in Wales and Monmouthshire. (*Weekly Notes*, 17th January, 1925.)

NURSING HOMES.

The Nursing Homes Registration Act, 1927, provides for the registration and inspection of nursing homes and purposes connected therewith.

Definition.—Any premises used or intended to be used for the reception of and the providing of nursing for persons suffering from any sickness, injury, or infirmity. This includes a maternity home but does not include (i) any hospital or other premises maintained or controlled by a Government department or local authority or by any other body of persons constituted by special Act of Parliament or incorporated by Royal Charter; (ii) any institution for lunatics within the meaning of the Lunacy Act, 1890; (iii) any certified institution, certified house or approved home within the meaning of the Mental Deficiency Act, 1913: "Maternity home" means any premises used or intended to be used for the reception of pregnant women or of women immediately after childbirth. (Sect. 10.)

Provisions for registration.—It is an offence (50*l*. fine for the first offence, fine or imprisonment or both for subsequent offences) to carry on a nursing house without being registered. Application for registration has to be made to the local supervising authority, which must issue a certificate of registration except in certain specified cases in which it has power to refuse to register. (Sect. 1.) The local supervising authority has power to cancel registration on certain grounds. (Sect. 2.) Any person aggrieved by a refusal to register or a cancellation of a registration may appeal to a Court of summary jurisdiction, from which either party may appeal to Quarter Sessions. (Sect. 3.) The local supervising authority may make bye-laws prescribing the records to be kept of patients received into a nursing home, miscarriages, children born, &c., and requiring notification of deaths. (Sect. 4.) Sect. 5 provides for inspection of nursing homes, sect. 6 allows the local supervising authority to exempt from the Act any hospital or institution not carried on for profit. An appeal from a refusal of exemption lies to the Minister of Health. Sect. 8 lays down the penalty for offences (other than under sect. 1).

Local supervising authority.—The council of every county as respects that county, and the council of every county borough as respects that borough, is made the local supervising authority, but a county council may, on request, delegate any of its powers or duties to the district council of any county district. (Sect. 9.)

Special provisions in sect. 11 applying the Act to London modify the definition for that area.

OIL.—*And see* PETROLEUM and BISULPHITE OF CARBON.

Duty on hydrocarbon oils at the rate of 4*d.* per gallon was imposed as from the 25th April, 1928, by the Finance Act, 1928. For details, see sects. 2 and 3, and 1st Sched. For regulations made under the section, see the Hydrocarbon Oils Regulations, 1928. (S. R. & O. 1928, No. 633, price 2*d.*)

OMNIBUS.—*See also under* MOTORS: MOTOR BUS.

Meaning of bye-law.—A bye-law was made in 1901 and approved by the Minister of Health and had not subsequently been amended or revoked. One paragraph of it provided that no more passengers could be carried in an "omnibus" than would admit of the provision of a specified sitting accommodation for each. Other paragraphs contained provisions as to *horse* omnibuses. It was held that the paragraph as to the number of passengers applied to *motor* omnibuses. (*Neal* v. *Guy*, Div. Ct.)

PARLIAMENT.—*See also* REPRESENTATION OF THE PEOPLE.

Speaker's retirement.—Mr. Speaker's Retirement Act, 1928, settled and secured an annuity of 4,000*l.* upon the Right Honourable John Henry Whitley in consideration of his eminent services as Speaker of the House of Commons.

Title.—Parliament is to be known as the Parliament of the United Kingdom of Great Britain and Northern Ireland. (Royal and Parliamentary Titles Act, 1927.)

PARTNERSHIP.

Construction of deed.—A partnership deed provided in clause 3 for the payment of annual salaries to two partners, and the division between them of net profits. Clause 21 provided for the payment to the representatives of a deceased partner of a sum equal to one-third of the net profits for five years. This latter sum, it was held, must be calculated without deducting the salary of the surviving partner. There is no general rule of construction

that the same meaning must be assigned to an expression throughout a document; this device may only be used to clear up ambiguity. (*Watson* v. *Haggitt*, P. C.)

PATENTS AND DESIGNS.

Act of 1928.—The Patents and Designs (Conventions) Act, 1928, amends the Patents and Designs Acts, 1907 and 1919, for the purpose of giving effect to a convention for the protection of industrial property. The Act deals with the following matters:—

Abuse of monopoly rights.—Sect. 2 amends sect. 27 of the Act of 1907, under which, where the monopoly rights of a patent are being abused, any person may apply "at any time" for relief by way of revocation of the patent, compulsory licence, &c. In future such an application cannot be made until the expiration of three years from the grant of the patent.

It will be recalled that one ground for this application is that after four years from the date of the patent it is not being commercially worked in this country, when under sect. 27 of the Act of 1907 the monopoly rights are deemed to be abused. The present Act in effect substitutes three years running from the "grant" for four years running from the "date" of the patent.

Dates.—Sect. 1 effects alterations in sects. 7 (1), 8 (1) and 11 (1) of the principal Act, the effect of which is to substitute references to the date which a patent would bear if granted for references to the date of application for a patent. The sections in question have reference to previous claims to the invention involved in applications made within the last fifty years.

Foreign patents.—Sect. 4 amends sect. 91 (1) (a) of the principal Act, which deals with protection to foreign patents by substituting "within six months" for "within four months."

Foreign vessels, aircraft and land vehicles.—A new section is substituted for sect. 48 of the Act of 1907. The use on board a foreign vessel of a patented invention or the use of a patented invention in connection with a foreign aircraft or land vehicle, if any of these come accidentally or temporarily into this

country does not constitute an infringement of patent rights if it has been declared by Order in Council that the foreign state to which they belong grants corresponding rights to British vessels, aircraft and land vehicles in similar circumstances. (Sect. 3.)

Sects. 48 and 91 of the Act of 1907 have been applied to Canada by the Patents, Designs and Trade Marks (Canada) Orders, 1928 (S. R. & O. 1928, No. 636, price 1*d.*), and to Austria, Germany, Italy, the Netherlands, Spain, and that part of the Empire of Morocco which is under Spanish protection, by the Hague Industrial Property Convention Order, 1928. (S. R. & O. 1928, No. 637, price 1*d.*)

PENSIONS.

Contributory Pensions Act.—The Widows', Orphans', and Old Age Contributory Pensions Act, 1925, provided for pensions of 10*s.* a week for widows and 7*s.* 6*d.* a week for orphans of insured contributors, and 10*s.* a week for certain persons between the ages of sixty-five and seventy (sect. 1), and provision was made for the contributions to be made. (Sect. 9.)

Numerous regulations have been made under the Act; we can only mention the chief of these in addition to last year's regulations:—

Claims and payment now governed by the Contributory Pensions (Claims and Payment) Regulations, 1927 (S. R. & O. 1927, No. 1294, price 6*d.*), and Amending Regulations, 1928. (S. R. & O. 1928, No. 683, price 1*d.*)

Contributions.—General regulations, S. R. & O. 1925, Nos. 1378 and 1455; the calculation of contributions is governed by Art. 6 of the Contributory Pensions, &c. Regulations, 1925 (S. R. & O. 1925, No. 1362), and the Contributory Pensions, &c. Regulations, 1927. (S. R. & O. 1927, Nos. 862 and 1278.)

Evidence of births, deaths and marriages under sect. 31 (1) of the Act. See Part XIV. of the Registration (Births, &c.) Consolidated Regulations, 1927 (S. R. & O. 1927, No. 485, price 1*s.* 3*d.*); for the form of requisition for such evidence, see the said Part XIV. and Sched. IX.

Insured persons: Voluntary contributors.—The original regulations are S. R. & O. 1925, No. 1402, which were amended by the National Health Insurance and Contributory Pensions (Voluntary Contributors) Amendment Regulations, 1928. (S. R. & O. 1928, No. 677, price 2*d.*)

Mercantile marine.—A special order as to seamen was made under sect. 17 of the Act. (S. R. & O. 1925, No. 1407, amended by S. R. & O. 1928, No. 521, price 1*d.*)

Overlapping: Workmen's Compensation.—To prevent overlapping, regulations prescribe notification of particulars of injury resulting in a workman's death (S. R. & O. 1926, No. 1424; S. R. & O. 1927, No. 482) and for the ascertainment of the weekly value of a sum awarded or agreed in respect of a child (under sect. 25 of the Act). (S. R. & O. 1927, No. 1018.)

References.—The Central Authority has made regulations for the appointment of referees and the procedure on reference, &c. (The Contributory Pensions (References) Regulations, 1928 (S. R. & O. 1928, No. 460, price 2*d.*), superseding the Provisional Regulations made on 31st December, 1925.)

Contributory pensions: Appointed day.—Where the applicant for an old age pension under sect. 7 of the Widows', Orphans' and Old Age Contributory Pensions Act, 1925, attained the age of sixty-five before the "appointed day," the statutory conditions laid down in sect. 8 as to payment of contributions need not necessarily have been complied with at that date. Contributions paid by or in respect of the applicant after the appointed day may be taken into account for the purpose of satisfying conditions (b) and (c) of sect. 8. (*Taylor* v. *Minister of Health*, Div. Ct.) (In this case it was the employer who had neglected to pay the contributions, and they were subsequently recovered from him by proceedings instituted by the Minister of Health. The Court said that if there had been wilful neglect to contribute on the part of the insured, other considerations would have arisen.)

Contributory pensions: Entry into insurance.—"Entry into insurance" in the Widows', Orphans' and Old Age Contribu-

tory Pensions Act, 1925, s. 5, under which a widow's pension is only payable if a minimum number of contributions have been paid since her husband's "entry into insurance," means the "last entry into insurance." The condition of the section is not satisfied where the payments are spread over two periods with a break in between. (*Wadsworth* v. *Minister of Health*, Div. Ct.)

Superannuation Act, 1892.—The following funds were declared to be public funds within the meaning of sect. 4 of the above Act:—The Transferred Officials Pay and Pensions Fund (S. R. & O. 1927, No. 1197, price 1*d.*), the Revenues of the Protectorate of Northern Rhodesia (S. R. & O. 1928, No. 162, price 1*d.*), Palestine (S. R. & O. 1928, No. 664, price 1*d.*), and British Guiana. (S. R. & O. 1928, No. 700, price 1*d.*)

PERPETUITY RULE.

A gift, in the will of a testator who died in 1926, to take effect at the end of twenty years from the death of the survivor of the descendants of the late Queen Victoria living at his death, is valid. Although it would be difficult and expensive to ascertain when the survivor died, it could not be said to be impracticable. (*Re Villar, Public Trustee* v. *Villar*, C. A.)

PETITION OF RIGHT.

Limitation: Indemnity.—In 1799 and 1801, the Crown made an *ex gratia* grant subject to an indemnity taken from the grantees of certain funds in Court belonging to a female lunatic thought to have died without representatives. Even if it now appears that in fact there were next of kin, the representatives of such next of kin could not recover the sums so paid from the Crown. The Crown must clearly have thought there were no next of kin: the indemnity was a matter of ordinary precaution and could not be taken as showing that the Crown knew the money was being wrongly paid over, and taking the indemnity did not create a trust. The claim was barred by the Limitation Act, 1623. (*In re the Petition of Right of Mason and Others*, Romer, J., and C. A.)

PETROLEUM.

Two Acts were passed in 1928 with regard to petroleum and petroleum spirit,—an amending Act (Petroleum (Amendment) Act, 1928) and a consolidation Act (Petroleum (Consolidation) Act, 1928), which incorporated the amending Act.

Amendments.—In addition to some minor amendments (sect. 8), the amending Act dealt with the following matters:—

Canal companies can make bye-laws as to loading, conveyance and landing of petroleum spirit in or upon their canals. (Amending Act, s. 6. Consolidation Act, s. 9.)

Dangerous or injurious spirit.—The Secretary of State is given power to make regulations with regard to any class of petroleum spirit which, by reason of its nature or of any substance mixed with it, is likely to be dangerous or injurious to health. The regulations may (*inter alia*) (a) require the observance of precautions for the protection of persons employed or engaged in handling or using the spirit in connection with any trade or business; (b) require persons selling the spirit to the public to give warning to purchasers as to the danger thereof and the precautions to be observed with respect thereto; and (c) prohibit the sale or use of petroleum spirit which he declares to be so dangerous or injurious to health that precautions for the protection of persons engaged in handling or using it are impracticable. Persons contravening or attempting to contravene any regulation made under the section are liable on summary conviction to a fine not exceeding 20*l.* for each day on which the offence occurs or continues. (Amending Act, s. 4. Consolidation Act, s. 12.)

Dock.—The definition of "dock" in sect. 2 of the Petroleum Act, 1871, is altered. (Amending Act, s. 1. Consolidation Act, s. 23.)

Harbour: Harbour authority.—New definitions are substituted for those in sect. 2 of the Petroleum Act, 1871. (Amending Act, s. 1. Consolidation Act, s. 23.)

Locomotives on Highways Act, 1896, s. 5, is repealed and re-enacted, with amendments. (Amending Act, s. 3. Consolidation Act, s. 10.) The section empowers a Secretary of State to make

regulations as to the keeping and use of petroleum or of any other inflammable liquid or fuel for the purpose of light locomotives.

Orders in Council.—Sect. 14 of the Petroleum Act, 1871, with regard to the making of Orders in Council applying the Petroleum Acts to any substance, is amended. (Amending Act, s. 2. Consolidation Act, s. 19.)

Petrol pumps.—Sect. 5 of the amending Act (now sect. 11 of the consolidating Act) is aimed at preventing the disfigurement of roadside scenery by unsightly petrol pumps. It gives county and borough councils (or, in the City of London, the Common Council) power to make bye-laws, regulating the appearance of petroleum filling stations (see definition below), or prohibiting their establishment. The object is stated to be "for the purpose of preserving for the enjoyment of the public the amenities (see definition below) of any rural scenery or of any place of beauty or historic interest or of any public park or pleasure promenade, or of any street or place which is of interest by reason of its picturesque character." The bye-laws have to be confirmed by the Secretary of State before they come into force.

Where bye-laws have been made prohibiting the establishment of petroleum filling stations in any area, the council may, by notice, procure the removal of such stations already established in that area, subject to the payment of any expenses reasonably incurred in the removal and of compensation for any loss sustained in direct consequence of the removal. Any question as to whether compensation is payable or as to its amount will be determined by a single arbitrator appointed by agreement between the parties, or, in default of agreement, appointed by the Secretary of State.

The occupier of any premises used or intended to be used as a petroleum filling station is authorised, notwithstanding anything in any conveyance or in any lease or other agreement, to do whatever is necessary for complying with the requirements of any bye-law made or removal notice served under this section.

Persons contravening any bye-law made or notice served under this section are liable on summary conviction to a fine of 20*l.* a day, and after conviction for establishing or failing to remove a petroleum filling station, the council may remove the station if it

is not removed within such time as the Court may allow, and recover the expense of removal from the person convicted.

By sect. 7 (now incorporated in sect. 23 of the consolidating Act), "amenities" in relation to any place includes any view of or from that place; and "petroleum filling station" means "any premises or place used or intended to be used by way of trade or for purposes of gain for fuelling motor vehicles with petroleum, and includes any building, advertisement, pump or other apparatus in or used in connection with any such premises."

Consolidation Act.—The Petroleum (Consolidation) Act, 1928, repeals and incorporates the provisions of the Petroleum Acts, 1871, 1879, 1926 and 1928. The previous Acts were first amended by the amending Act, which came into force on the 3rd August, and then that Act was itself repealed with the Acts which it amended.

Duty.—See sect. 2 of Finance Act, 1928.

Excise Regulations.—See Petroleum Oils (Excise) Regulations, 1928. (S. R. & O. 1928, No. 335, price 1*d*.)

POLICE.

Appeal from dismissal.—A right of appeal is given by the Police (Appeals) Act, 1927, to members of the police force who are dismissed or required to resign as an alternative to dismissal.

Savidge case.—The report of the tribunal appointed to inquire into the interrogation of Miss Savidge by the police was published as Cmd. No. 3147, price 9*d*.

POOR LAW.

Boards of guardians may be displaced by nominees of the Minister of Health if they have ceased to exercise all or any of their functions or are acting in a way which will render them unable to discharge their functions. (Boards of Guardians (Default) Act, 1926.)

Consolidating Act.—The enactments relating to the relief of the poor are consolidated in the Poor Law Act, 1927.

Emergency provisions.—The Local Authorities (Emergency Provisions) Act, 1928, s. 1, extended the provisions of the Local Authorities (Emergency Provisions) Act, 1923, mentioned in the Schedule to the above-named Act, as amended by the Local Authorities (Emergency Provisions) Act, 1924, and by the Local Authorities (Emergency Provisions) Act, 1926, and by the above-named Act, to 1932.

Loan, recovery of.—Where poor law relief is given by way of loan, the guardians cannot proceed before the justices to recover the amount under the Poor Law Act, 1927, s. 46 (1), which authorises proceedings in the County Court "or other Court for the recovery of small debts for the district." The application should be made under sect. 46 (2) and (3), under which the person relieved and his employer may be summoned before a justice to show cause why wages due from the employer should not be paid to the guardians. (*Evans* v. *Morgan,* Div. Ct.)

Loan: Time for proceedings.—If poor law relief is given by way of loan under the Poor Law Amendment Act, 1834, s. 58 (now sect. 45 of the Poor Law Act, 1927), proceedings before the justices to recover the amount must, under sect. 11 of the Summary Jurisdiction Act, 1848, be taken within six months of the cause of complaint. The matter of complaint, however, does not arise when the loan is made but when application is made for repayment. *Quære* whether a matter of complaint can be said to have arisen for the purpose of the Poor Law Amendment Act, 1834, s. 59 (now sect. 46 of the Poor Law Act, 1927), until there is an actual master in existence from whom the wages due to the poor person can be recovered. (*Ashby-de-la-Zouch Guardians* v. *Summers and Others,* Div. Ct.)

Metropolitan common poor fund.—By sect. 2 of the Local Authorities (Emergency Provisions) Act, 1928, which is to continue in force as long as the Local Authorities (Financial Provisions) Act, 1921, is in operation, (1) the board of guardians of every poor law union in London shall, not later than four weeks before the commencement of each half year, submit to the Metropolitan Asylums Board estimates in the prescribed form of proposed expenditure for that half year for the purposes in respect

of which repayments are to be made out of the metropolitan common poor fund and of the amount so repayable. They may also submit supplementary estimates. (2) The Metropolitan Asylums Board is to approve the estimates of the amounts repayable out of the fund either as submitted or subject to such reduction as the Board may think fit to make, and must furnish the district auditor with a copy of the estimates as approved. (3) The district auditor in giving any certificate which he is required to give by the Poor Law Act, 1927, s. 202, must exclude therefrom any amount by which the expenditure of the board of guardians for any purpose, so far as repayable out of the fund, exceeds the sum specified as so repayable in relation to that purpose in the estimates as approved by the Metropolitan Asylums Board, and the sum repayable to the guardians shall be the sum so certified.

Settlement.—A nurse was under contract to serve for three years in a nursing home in a given parish, commencing on July 9th, 1921. On July 2nd, 1924, she was given a holiday of three weeks (wages being paid during that period), so that the three years expired during the holiday period. The nurse never intended to return after the expiration of her holiday, and did not in fact do so. A settlement had not been acquired by three years' residence in the parish. There was no residence for three years in fact, and no *animus revertendi*. (*Farnham Union* v. *Cambridge Union*, Div. Ct.)

PORT OF LONDON AUTHORITY.

Elections.—For regulations with respect to the method of election of elected members of the Port of London Authority, see S. R. & O. 1928, No. 130, price 1*d*.

POST OFFICE SAVINGS BANK.

Nomination.—A depositor in the Post Office Savings Bank signed a nomination form in favour of A. The name of a witness appeared on the form, but the nomination had not in fact been signed in his presence. The Postmaster-General paid the money to A. It was held that the depositor's administrator could recover

the money from A. as the form was invalid. (*Pearman* v. *Charlton*, Wright, J.)

POTATOES.

Destructive Insects Act, 1877.—Proceedings for an offence against an order under this Act may, where it concerns the movement, sale, consignment or planting of potatoes, be instituted at any time within twelve months of the alleged offence, the Summary Jurisdiction Acts notwithstanding. (Destructive Insects and Pests Act, 1927, s. 1 (3).)

Seed potatoes.—A similar provision with regard to false statements as to the class or variety of seed potatoes is contained in the Seeds (Amendment) Act, 1925.

POWERS OF ATTORNEY.

Deposit.—Powers of attorney are now sometimes required under the Law of Property Act, 1925, s. 125, and the Trustee Act, 1925, s. 25, to be deposited in the Central Office, and they may always be so deposited under sect. 219 of the Judicature Act, 1925. The rules governing deposits are now contained in Ord. LXIA. of the R. S. C. (R. S. C. (No. 4), 1926. S. R. & O. 1926, No. 956/L. 29, price 1*d*.)

PRIVATE INTERNATIONAL LAW.—*See also* DIPLOMATIC PRIVILEGE.

Divorce jurisdiction.—If a wife obtains a decree of judicial separation from her husband on the ground of his desertion, and he subsequently abandons his English domicil and acquires a French domicil, and commits adultery, the wife cannot petition for a dissolution of the marriage. The husband is not in these circumstances estopped from pleading the change of domicil, nor is his domicil stereotyped by the decree of judicial separation. (*H.* v. *H.* (No. 2), Lord Merrivale, P., dissenting from *dicta* of Lord Gorell, P., in *Armytage* v. *Armytage*, (1898) P. 178, and *Ogden* v. *Ogden*, (1908) P. 46.)

Domicil of choice: Re-acquisition.—An abandoned domicil of choice can only be re-acquired by fulfilment of the same

conditions as to residence and intention as are requisite for the original acquisition. (*Fleming and Another* v. *Horniman and Another,* Hill, J.)

Foreign bankruptcy.—If a person trading in Belgium is in proceedings defended by him declared a bankrupt by the Belgian Court, the English Court will assist the curator under the Belgian bankruptcy decree to realise English leaseholds belonging to the bankrupt. In this case the Belgian curator was appointed receiver of the English leaseholds, with authority to sell the same and apply the proceeds for the purposes of the Belgian bankruptcy. (*Re Kooperman,* Astbury, J.)

Foreign judgment, Impeaching.—A foreign judgment cannot be impeached on the ground that it is founded on the report of an expert appointed by the foreign Court who was biassed and prejudiced against the defendant, if the report acted on was only in the nature of evidence, and the defendant had an opportunity of attacking it before it was acted on by the foreign Court. (*Jacobson* v. *Franchon,* C. A.)

Foreign judgment obtained by fraud.—A salvage agreement provided for security for a salvage claim being given in London, the ship not to be arrested if security was given. In an action in the Turkish Courts against the ship and master, judgment was obtained for the amount claimed as salvage, the plaintiff in those proceedings suppressing the fact (which was unknown to the master) that security had in fact been given. MacKinnon, J., held (1) that the shipowners could sue for damages for breach of contract, the Turkish judgment not being an estoppel on this point since the owners were not parties to the proceedings; (2) that in the action here for damages, a declaration could be made that the Turkish judgment was invalid as having been obtained by fraud, but that (3) an injunction could not be granted restraining the enforcement of that judgment anywhere in the world. The Court of Appeal overruled this last decision. The English Court can grant an injunction against a British subject in these circumstances; in so doing it does not assert jurisdiction over a foreign Court, but proceeds upon the principle that the person seeking

to enforce the judgment is in conscience debarred from attempting to do so. (*Ellerman, Lines, Ltd.* v. *Read and Others*, C. A.)

Foreign proceedings pending.—The defendants in an Admiralty action for collision had already instituted proceedings against the plaintiff in a foreign Court, which proceedings were still pending. The Court refused to stay the action by the plaintiff on the ground that he was a defendant in an action elsewhere. (*The Janera*, Hill, J.)

Foreign receiver.—If a company incorporated under the law of a foreign country is, in that country, adjudged to be insolvent, and a receiver appointed, that receiver can sue in this country for a debt due to the company here. (*Macaulay* v. *Guarantee Trust Co. of New York*, Clauson, J., applying the principle of *Alivon* v. *Furnival* (1834), 1 Cr. M. & R. 277.)

Foreign will: English assets.—Administration was taken out in this country by the attorney of a foreign principal in respect of English assets belonging to a foreign testator. The foreign principal was not by virtue of the law of domicil an executor, but by virtue of his interest under the foreign will was charged by the law of his domicil with duties which English law imposes on an executor. The Court authorised the administrator, after satisfying English liabilities and foreign liabilities of which he had notice, to hand over the surplus to the foreign principal without advertising for foreign creditors, as the principal was liable for payment of foreign debts. (*Re Achillopoulos, Johnson* v. *Mavromichali*, Tomlin, J.)

Infancy.—A legacy will be paid out of Court to a person under twenty-one if, by the law of his domicil, he has attained majority. (*Re Schnapper*, Clauson, J.)

Jurisdiction.—To constitute residence by a British company in a foreign State so as to render the company subject to the jurisdiction of the Courts of that State, the company must to some extent carry on business in that State at a definite and reasonably permanent place. (*Littauer Glove Corporation* v. *F. W. Millington* (1920), *Ltd.*, Salter, J.)

Revenue laws of foreign State.—The Court has no jurisdiction to entertain an action to enforce the revenue laws of a foreign State; thus it was held that the Queen of Holland could not sue in the English Courts for death duties imposed by Dutch law. (*Re Visser, Queen of Holland* v. *Drukker and Others,* Tomlin, J.)

PROBATE.

Administration bonds.—The provisions as to these are contained in sect. 167 of the Judicature Act, 1925. A slight amendment is made in sub-sect. (4) of that section by the 1st Schedule of the Administration of Justice Act, 1928, by which the person to whom the bond is assigned may sue on it by virtue of the order without any actual assignment. For Rules and Forms, see Non-Contentious Probate Rules, 1925.

Administration: Claimants, order of.—As to the order in which claimants rank, see Rule 120 of the new rules of 1925.

Administration: Court's discretion.—The proviso to sect. 162 of the Supreme Court of Judicature (Consolidation) Act, 1925, is replaced by sect. 9 of the Administration of Justice Act, 1928. The proviso now runs:—

"Provided that (a) where the deceased died wholly intestate as to his estate, administration shall be granted to some one or more persons interested in the residuary estate of the deceased, if they make an application for the purpose, and as regards lands settled previously to the death of the deceased, be granted to the trustees, if any, of the settlement, if willing to act; and (b) if, by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of administration, the Court may in its discretion, notwithstanding anything in this Act, appoint as administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the Court thinks fit."

The effect of the alteration appears to be to give the Court a

freer hand in making a grant—whether of simple administration or of administration with the will annexed—when the estate is insolvent or there are other special circumstancess. The amendment may have been suggested by *In the Estate of White* (1927), 43 T. L. R. 729, where it was held (doubting *In the Estate of Herbert,* (1926) P. 109) that the Court could not, where there was a minority interest, appoint the widow as sole administratrix, in spite of the probable insolvency of the estate. Apparently, under the new proviso, such a grant could be made, and *In the Estate of Herbert* is good law.

Administration with will annexed.—As to order in which claimants rank, see Rule 119, a rule of 1925.

Clerks in district probate registries.—As to their appointment, status and superannuation allowances, see sects. 3 and 4 of the Administration of Justice Act, 1928, which substitute a new sub-section for sub-sect. (2) of sect. 109 of the Supreme Court of Judicature (Consolidation) Act, 1925, and insert a new section—109A—in that Act.

Colonial probates.—By the Colonial Probates (Protected States and Mandated Territories) Act, 1927, the power of His Majesty to apply the Colonial Probates Act, 1892, to British possessions includes a power to apply the said Act to any territories, being either territories under His Majesty's protection or territories in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, to which it cannot be applied by virtue of the provisions of the Foreign Jurisdiction Acts, 1890 and 1913.

The Act of 1892 was applied to the Federated Malay States by Order in Council on June 15th, 1928. (S. R. & O. 1928, No. 496, price 1*d.*)

Commissioners for Oaths: Fees.—Commissioners may now in non-contentious probate matters charge 2*s.* for each oath, 1*s.* 4*d.* for each exhibit, 2*s.* for each obligor to a bond. (Non-Contentious Probate (Commissioners for Oaths) Rules, 1926. S. R. & O. 1926, No. 1044/L. 33, price 1*d.*)

Costs.—In a probate action costs will not be allowed out of the estate, but follow the event where the litigation is caused merely by the assertion by the unsuccessful party of a domicil for the deceased which would result in that party taking a large share of the estate in opposition to the testator's wishes. (*Fleming* v. *Horniman,* Hill, J.)

Costs: Executor's right.—An executor who succeeds in establishing a will can be deprived of his right to have costs as between solicitor and client out of the estate if he is guilty of inequitable conduct amounting to a violation or culpable neglect of his duty. (*Thomas* v. *Jones,* Lord Merrivale, P.)

Costs of counsel.—The President has decided that the costs of counsel attending upon any application in Probate and Divorce, not made in open Court, shall not be allowed upon taxation unless a certificate for counsel has been applied for and obtained. This Direction came into force in respect of attendances on and after 17th April, 1928.

Deposit, places of.—Sect. 170 of the Supreme Court of Judicature (Consolidation) Act, 1925, is repealed and replaced by sect. 11 of the Administration of Justice Act, 1928. The former section provided that there should be one place in London (as directed by Order in Council) for the deposit of original wills and certain other documents. The new section provides that all original wills and other documents under the control of the High Court, either in the principal probate registry or in any district probate registry, shall be deposited in such places as the President, with the Lord Chancellor's consent, may direct.

District probate registries.—The extended power to make grants in district probate registries conferred by sects. 150 to 157 of the Judicature Act, 1925, came into force on the 1st January, 1926, the temporary provisions in Part I. of the 5th Sched. of the Act then ceasing. (Order of President, 1st January, 1926.)

Registrars.—Sect. 1 of the Administration of Justice Act, 1928, substitutes a new sub-section for sub-sect. (3) of sect. 126 of the Supreme Court of Judicature (Consolidation) Act, 1925, with regard to the qualification of probate registrars. No one can

be appointed a probate registrar unless he is a practising barrister or solicitor of not less than ten years' standing, or a district probate registrar of not less than five years' standing, or has served not less than ten years as a clerk in the principal probate registry. To be appointed a *district* probate registrar, a person must be a practising barrister or solicitor of not less than five years' standing, or a probate registrar, or must have served not less than ten years as a clerk in the principal probate registry or a district probate registry.

The section also makes alterations in the status of district probate registrars, and enables the President to appoint part-time or provisional district probate registrars.

Sect. 2 contains a temporary provision with regard to retiring allowances of district probate registrars.

Resealing Northern Irish grants.—Sect. 169 of the Supreme Court of Judicature (Consolidation) Act, 1925, is amended by sect. 10 of the Administration of Justice Act, 1928. To be capable of being resealed, a Northern Irish grant must have been made "in respect of the personal estate of a person who died domiciled in Northern Ireland"—these words being now inserted in sub-sect. (1). Also, to obtain the resealing, it is now necessary to certify, in a certificate under the hand of the proper officer of the High Court of Justice in Northern Ireland, that a bond has been given to that Court in a sum sufficient to cover the property in England as well as in Northern Ireland in respect of the grant to be resealed. This applies to probates as well as administrations.

Resealing Scottish confirmation: Effect on real estate.—A Scottish executor, who has obtained a resealing of the Scottish confirmation in England, can sell English real estate forming part of the deceased's estate. Under sect. 168 of the Judicature Act, 1925, the resealing is expressly equivalent to a grant of probate. Apparently, if there is no personalty here, resealing is impossible and probate must be obtained: but if there is personalty the confirmation may be resealed and will be operative as to realty also. (*Re Howden and Hyslop's Contract*, Astbury, J.)

Rules.—To meet the new law of 1925 new rules were made, entitled the Non-Contentious Probate Rules, 1925. (S. R. & O. 1925, No. 1231/L. 37, price 3*d.*)

Settled land: Application under Administration of Estates Act, 1925, s. 23.—It was directed (31st July, 1928) by the President that, prior to any application under sect. 23 of the Administration of Estates Act, 1925, to appoint a special or additional personal representative in respect of settled land, notice of the intention to apply should be given in the subjoined form to the Record Keeper of the Principal Probate Registry, who will annex it to the Act or Record.

A direction must then be obtained, in chambers in the Chancery Division, that such application be made. The subsequent application in the Probate Division will be made by summons before the Registrar, supported by affidavit. Before the summons issues the direction obtained in the Chancery Division, and the existing grant of representation, must be brought into the Contentious Department of the Principal Probate Registry, and will be annexed to the summons. At the hearing the Registrar will decide what security, if any, shall be given by the special or additional personal representative.

No further fee will be payable when the Registrar's order is lodged in the Notation Department for the notation of the grant and the records. The form of memorandum endorsed is to be that one of the forms set forth below which is applicable to the facts of the case, viz.:—

(1) "By order on summons dated the day of , E. F. was appointed additional personal representative of the deceased, in respect of settled land, jointly with "

or

(2) "by order on summons dated the day of , E. F. was appointed the special representative of the deceased, in respect of settled land, in place of ."

Form of Notice of intention to apply.

In the High Court of Justice.

Probate, Divorce and Admiralty Division (Probate).

Administration of Estates Act, 1925, s. 23.

A. B., Deceased.

Take notice that application is intended to be made to the Court by or on behalf of C. D., of , in the County of , that E. F., of , in the County of , be appointed a special [an additional] representative of A. B., deceased, in respect of settled land vested in the deceased under the will of, &c. (or as the case may be) in place of [jointly with] G. H., the sole executor (or as the case may be) of the said A. B., deceased, to whom representation was granted on the day of .

(Signed) ,
of ,
Solicitors for .

To the Senior Registrar,
Principal Probate Registry,
Somerset House.

Settled land grants.—It was held by Romer, J., in *Re Bridgett and Hayes' Contract,* that sect. 22 (1) of the Administration of Estates Act, 1925, does not apply where, upon the death of a tenant for life, a settlement previously existing, comes to an end. Thus if land is settled on A. for life, and then to trustees on trust for sale, it is proper to obtain a general grant of probate to A.'s estate. Sect. 22 (1), under which a tenant for life is deemed to have appointed the trustees of the settlement as his special executors for settled land, does not apply, for the settlement comes to an end on the death of A. (See 46 L. N. 367.)

About the same time it was held by Lord Merrivale in *Re Gibbings* that where a settlement is created by will and there are no other trustees of the settlement, the personal representatives of the settlor are entitled, on the death of the tenant for life, to obtain a grant of probate of the tenant for life's will limited to the settled land. They are the special executors under sect. 22 of the

Administration of Estates Act, 1925. The practice formerly prevailing in the Probate Court of treating them as only entitled to administration with the will annexed was wrong.

In consequence of these two decisions, the following directions were given by the Senior Registrar of the Principal Probate Registry:—

SETTLED LAND—TRUSTEES.

(A) Before a general grant of representation, including settled land, is made, all trustees of the settled land duly appointed by a formal appointment, whether before or after the death, must be cleared off.

If there are no such trustees, and the settlement arises under a will or intestacy (and not under a deed), the personal representative of the settlor must also be cleared off unless the registrar shall otherwise decide upon affidavit evidence.

(B) *Re Gibbings, deceased*, L. T. Notes, 26th November, 1927.

If land is settled upon a person for an interest not ceasing on his death, the trustees of the settlement at the date of the death of that person, though they may have no power of sale, have the right under sect. 22 of the Administration of Estates Act, 1925, to a grant of probate as special executors and a corresponding right to a grant of administration.

The seat must ascertain, from the deed or will, that the interest does not cease at the death.

This practice does not apply to cases of life tenancy in which the interest ceases at the death.

Re Bridgett and Hayes' Contract, L. T. Notes, 26th November, 1927.

Where settled land has vested in a remainderman absolutely upon, and by reason of, the death of the tenant for life, a general grant of probate, or administration (with or without will) of the estate of the tenant for life, not mentioning or including settled land, will be made without clearing off the trustees of settled land, even where there are trustees with power of sale.

It should be sworn in the oath that there *was* settled land, but that the settlement came to an end upon the death of the deceased.

A grant including or limited to settled land cannot be taken in such cases. It is the duty of the seat to ascertain whether the settlement has come to an end owing to an absolute vesting in the remainderman.

See sect. 3, Settled Land Act, 1925.

The Inland Revenue Affidavit Form A7 should be used; but the second part of Account 1, which deals with settled land to be *covered by the grant*, will not be filled in.

It was further directed that in all future grants save and except settled land, the formula to be used shall be "save and except settled land vested in the deceased which was settled previously to h— death, and remains settled land notwithstanding h— death." Where all the land vested in the deceased ceased to be settled land on his death, a general grant will issue. Where a grant save and except settled land has issued in the form used prior to the decision in *Re Bridgett and Hayes' Contract*, and it appears by an affidavit of the grantees that there was settled land vested in the deceased which ceased to be settled land on the death of the deceased, the grant may be amended by substituting the formula given in para. 1 provided that no grant limited to that settled land is in existence. If such grant has been made, it must first be revoked. (See 47 L. N. 108 *et seq.*)

PUBLIC AUTHORITIES PROTECTION ACT.

Quia timet action: Costs.—Where an action is unsuccessfully brought against a public authority to restrain a threatened injury, the plaintiff can be ordered to pay solicitor and client costs. Sect. 1 (b) of the Public Authorities Protection Act, 1893, applies to *quia timet* actions, and is not confined to actions in respect of acts done. (*Graigola Merthyr Co., Ltd.* v. *Swansea Corporation*, C. A.)

PUBLIC HEALTH.

Ophthalmia Neonatorum.—See the Public Health (Ophthalmia Neonatorum) Amendment Regulations, 1928, dated May 25th, 1928, for the prevention of epidemic and other diseases. (S. R. & O. 1928, No. 419, price 1*d*.)

Puerperal fever.—For the prevention of epidemic, endemic or infectious diseases, see the Public Health (Notification of Puerperal Fever and Puerperal Pyrexia) Amendment Regulations, 1928, dated May 25th, 1928. (S. R. & O. 1928, No. 420, price 1*d.*)

Treaty.—See International Sanitary Convention, June 21st, 1926. (Treaty Series, No. 22, Cmd. 3207, price 2*s.* 6*d.*)

PUBLIC TRUSTEE.

Administration of estates: Assignment of judge.—Rule 15 (1) of the Public Trustee Rules, 1912, provides that in the administration of small estates the Public Trustee may, without judicial proceedings, take the opinion of the High Court, and para. (2) of the same rule provides for the assignment of such matters to a particular judge by the Lord Chancellor. By order dated 29th October, 1928, the Lord Chancellor has assigned matters under this rule to Tomlin, J.

Fees were reduced by the Public Trustee (Fees) Order, 1926. (S. R. & O. 1926, No. 1268/L. 46, price 3*d.*)

QUIA TIMET.—*See also* PUBLIC AUTHORITIES PROTECTION ACT.

A *quia timet* action is a proceeding by which the Court is enabled to prevent its jurisdiction from being stultified. The remedy is open to sureties under an administration bond to prevent improper dealing with the intestate's estate by the administrator. (*Re Anderson-Berry, Harris* v. *Griffith*, C. A.)

RAG FLOCK.

In order to remove doubts which have arisen as to the meaning of the phrase "flock manufactured from rags" as used in the Rag Flock Act, 1911, the Rag Flock Act (1911) Amendment Act, 1928, declares that the expression "flock manufactured from rags" means flock which has been produced wholly or partly by tearing up woven or knitted or felted materials, whether old or new, but does not include flock obtained wholly in the processes of the scouring and finishing of newly woven or newly knitted or newly felted fabrics.

RAILWAYS.

Charges: Owner's risk.—For the modifying Order, dated March 28th, 1928, determining reductions to be made from standard charges where damageable merchandise is carried by railway under owner's risk conditions, see S. R. & O. 1928, No. 573, price 1*d*.

Passenger's luggage.—A railway carrier is liable as a common carrier for a passenger's luggage where it is retained as hand luggage, unless the company can prove that the passenger assumed the immediate care of it, and that the loss was caused by his failure to exercise care. Thus the company is not relieved of liability merely because the luggage is not in the carriage in which the passenger himself travels, even though it is placed in a carriage of a higher class. *Quære* as to this liability if the passenger unlawfully intended to travel in a higher class than that for which he had paid. (*Vosper* v. *G. W. R.*, Div. Ct.)

Railways Act, 1921.—The appointed day under this Act was the 1st January, 1928.

Road powers.—The four railway companies have been authorised to provide road transport services by private Acts. These Acts, which in the main are identical, limit the powers in various ways, *e.g.*, a passenger may not in one journey be both taken up and set down in the Metropolitan Police district and the City of London. (Sect. 3.) The transport service of a local authority in its own area is protected. (Sect. 4.) Bridges of the company are not to be allowed to company vehicles and prohibited to others. (Sect. 5.) Services have to be notified to the Minister of Transport (sect. 6), and the companies may not manufacture road motor vehicles other than the bodies. (Sect. 7.) Working agreements with other bodies are allowed. The Acts are:—London Midland and Scottish Railway (Road Transport) Act, 1928 (18 & 19 Geo. 5, c. ci); Great Western Railway (Road Transport) Act, 1928, c. cii; London and North Eastern Railway (Road Transport) Act, 1928, c. ciii); and Southern Railway (Road Transport) Act, 1928, c. civ. All price 6*d*.

RATING AND VALUATION.

Acts.—The Rating and Valuation Act, 1925, effected radical changes in the law relating to rating. It has been amended by the Rating and Valuation Act, 1928.

Another important Act is the Rating and Valuation (Apportionment) Act, 1928, which paves the way to the grant of relief from rates in respect of agricultural hereditaments, industrial hereditaments and freight-transport hereditaments, as defined by the Act. It provides for such hereditaments being distinguished in the valuation lists which will come into force after the 1st October, 1929. Rules relating to the special list were made on August 20th, 1928, the Rating and Valuation (Apportionment Act (Special List)) Rules, 1928. (S. R. & O. 1928, No. 627, price 5*d*.)

Appeals to Quarter Sessions under Part II. of the Rating and Valuation Act, 1925, are governed by the Rating and Valuation Act (Assessment Appeals) Rules, 1927. (S. R. & O. 1927, No. 416, price 2*d*.)

Beneficial occupation.—Land and buildings belonging to the plaintiffs stood unused (except for a caretaker) whilst the plaintiffs were deliberating as to what use the premises should be put. It was held that the plaintiffs were not in beneficial occupation. Goods of the plaintiffs having been seized under a distress warrant issued by justices for non-payment of the rates, the plaintiffs brought an action of replevin, but failed to recover damages. The justices jurisdiction to issue the distress warrant depended on occupation within the parish, not on beneficial occupation. (*London C. C.* v. *Hackney B. C.*, Wright, J.)

Declaration of invalid notice.—The defendants to an action for a declaration that the return required was invalid withdrew their defence. Nevertheless the plaintiff, being unable to move for judgment in default of defence, was able to go to trial and having established his case, obtained his declaration and costs. (*Grant* v. *Knaresborough U. D. C.*, Astbury, J.)

London assessment and appeal.—On an appeal to Quarter Sessions against a London rating assessment, there is jurisdiction

to hear the appeal even if the hearing has been adjourned over March 31st. Sect. 42 (13) of the Valuation (Metropolis) Act, 1869, authorising assessment sessions to be held at "any time after 1st February . . . which will enable them to determine all appeals . . . before the ensuing thirty-first of March," does not deprive Quarter Sessions of a discretion to fix the date of hearing later. (*R.* v. *County of London Justices, Ex parte Locke, Lancaster and W. W. and R. Johnson & Sons, Ltd.*, Div. Ct.)

Reduction of assessment.—If a rating assessment committee reconsidering their former decision after the expiration of the rating period in which the decision was given reduce the assessment, the reduction can be made to operate retrospectively so as to relate back to the earlier rating period. (*Kingston Mill, Stockport, Ltd.* v. *Owen,* Div. Ct.)

Requisition for gross takings, &c.—A rating authority is not entitled under sect. 40 of the Rating and Valuation Act, 1925, to require the licensee and occupier of licensed premises to make for the purposes of valuation a return stating (a) the gross takings for the last three years, (b) the outgoings for the last three years, (c) the tenant's remuneration, (d) breakages and depreciation, (e) lighting, heating, &c., and (f) the tenant's capital. (*Grant* v. *Knaresborough U. D. C.*, Astbury, J.)

RENT.—*See also under* LANDLORD AND TENANT.

Redemption.—See Redemption of Rents Rules, 1925. (S. R. & O. 1925, No. 809, price 2*d.*)

RENT AND MORTGAGE INTEREST RESTRICTIONS.

The Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, continue in operation in virtue of the Expiring Laws Continuance Act, 1928, till 25th December, 1929, when, unless further continued, they will cease to operate, except that Part II. of the Rent and Mortgage Interest Restrictions Act, 1923, will continue to operate for another five years. (Rent and Mortgage Interest (Restrictions Continuation) Act, 1925, s. 1 (2).) Part II. confers a modified protection on the person who is the sitting

tenant when the other provisions of the Acts expire, and on the mortgagor of a house occupied by such a tenant.

The chief cases of importance decided on the subject during 1928 are:—

Appeals.—Sect. 2 (6) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, where applicable, bars appeals from the County Court even where questions of fact and of the construction of documents are involved. (*Elvington Tenants, Ltd.* v. *Hatton,* Div. Ct.)

Application of the Act.—The contractual tenant of a house sub-let the whole to sub-tenants of parts thereof, one part being sub-let furnished. The house was taken for this purpose, and the tenant had no personal occupation. The tenant was protected during the contractual tenancy against rent in excess of that allowed by the Acts. The letting was not of business premises, the non-occupation by the tenant, while it might prevent his holding over as statutory tenant after his term expired, did not prevent his being protected by the Acts till then, nor had the furnished let this result. (*Ebner* v. *Lascelles,* Div. Ct.)

Decontrol.—A group of cases (*Lloyd* v. *Cook, Goudge* v. *Broughton, Simson* v. *Miatt, Bartram* v. *Brown, Barker* v. *Hutson*) heard together by the Court of Appeal deal with the decontrol provisions of sect. 2 of the Rent and Mortgage Interest Restrictions Act, 1923. The effect of these decisions is as follows:—

(1) Where a freeholder has actual possession of a house the house is decontrolled even though it has never previously been let. There may be a "landlord" within sect. 2 (1) of the Rent and Mortgage Interest (Restrictions) Act, 1920, though there has never been a previous letting. (*Goudge* v. *Broughton; Lloyd* v. *Cook.*)

(2) Where a freeholder has had actual occupation the house is decontrolled absolutely, and as to all parts thereof. If there is a subsequent letting of part of that house, that part, even though never previously let separately, remains decontrolled, and the tenant thereof is outside the protection of the Acts. (*Cohen* v. *Gold,* (1927) 1 K. B. 865, overruled, *Ratinsky* v. *Jacobs,* 44 T. L. R. 548, followed; *Barker* v. *Hutson; Simson* v. *Miatt.*)

(3) Where A., a freeholder, lets (at a rent not less than two-thirds of the rateable value) to a tenant, B., who lawfully sub-lets the whole premises to C., if C. vacates and B. resumes possession the Court differed on the question whether the premises are decontrolled. Scrutton, L.J., thought not; Greer and Sankey, L.JJ., thought the premises would be decontrolled, and B. no longer protected by the Acts as against A.

(4) The last three statements still hold good (in virtue of sect. 12 (7) of the principal Act) if for "freeholder" is substituted "lessee at a rent less than two-thirds of the rateable value."

(5) A letting under sect. 2 (2) of the Rent and Mortgage Interest Restrictions Act, 1923, only effects decontrol where it is in favour of the sitting tenant. (*Bartram* v. *Brown*.)

Decontrol: "Actual possession."—There is no actual possession under the Rent and Mortgage Interest Restrictions Act, 1923, s. 2 (1), and therefore no decontrol (1) where a tenant within sect. 12 (7) of the principal Act, at a rent less than two-thirds of the rateable value, holds over at the end of his tenancy under a new lease at a rent exceeding two-thirds of the rateable value (*Brooks* v. *Liffen*, C. A.), or (2) where, on the tenant of a house vacating, the landlord resumes possession without ejecting a sub-tenant to whom, in breach of covenant, part of the house has been sub-let. (*Bartram* v. *Brown*, C. A.)

Executors.—The Court of Appeal for Northern Ireland held that the rights of a statutory tenant do not pass to his executors. (*Drury* v. *Johnston*.)

Jurisdiction.—The plaintiff in a High Court action to recover possession of a house falling within the Rent and Mortgage Interest (Restrictions) Act, 1920, though prevented by sect. 17 of the Act from obtaining the costs of the claim, is not barred by that section from recovering the costs of a counterclaim by the defendant setting up a right of renewal. (*Branch* v. *Bennet's Dairies, Ltd.*, Mackinnon, J.)

Statutory tenant: Liability for rent due from predecessor.—Where on the death of a statutory tenant his daughter, as a member of his family residing with him at the time of his death,

became statutory tenant in his place, she was not personally liable for arrears of rent accrued due during her father's lifetime, nor was she liable to ejectment by reason thereof. (*Tickner* v. *Clifton*, Div. Ct.)

Statutory tenant not in personal occupation.—A tenant, after the expiration of his tenancy, was protected against judgment for ejectment though, having sub-let, he was not in personal occupation. *Gidden* v. *Mills*, (1925) 2 K. B. 713 followed. (*West Wales Joint Board for the Mentally Defective* v. *Evans*, Div. Ct.)

Sub-letting by statutory tenants.—Unless the contractual tenancy forbids sub-letting, a statutory tenant may sub-let provided that he does not by a series of sub-lettings part with the whole of the premises (which would be equivalent to an assignment, which was held in *Keeves* v. *Dean* ((1924) 1 K. B. 645) not to be possible). Whether the sub-tenants under such a series of assignments would be protected by the Act, *quære*. (*Roe* v. *Russell*, C. A.)

REPRESENTATION OF THE PEOPLE.

Equal franchise.—The Representation of the People (Equal Franchise) Act, 1928, introduces universal adult suffrage in parliamentary elections, and makes other amendments of electoral law.

Citation.—Sect 8. This Act and the Representation of the People Acts, 1918 to 1926, may be cited as the Representation of the People Acts.

Election expenses.—Sect. 5 makes sixpence (instead of sevenpence) per elector the maximum expenditure in *county* elections.

Electoral qualification.—Sect. 1 (1) substitutes a new section for sect. 1 of the principal Act (*i.e.*, the Representation of the People Act, 1918), making the necessary change to effect the extension of the franchise, which is the main purpose of the Act. It is as follows:—

"(1) A person shall be entitled to be registered as a parliamentary elector for a constituency (other than a university con-

stituency) if he or she is of full age and not subject to any legal incapacity; and (a) has the requisite residence qualification; or (b) has the requisite business premises qualification; or (c) is the husband or wife of a person entitled to be so registered in respect of a business premises qualification.

"(2) A person, in order to have the requisite residence qualification or business premises qualification for a constituency, (a) must on the last day of the qualifying period be residing in premises in the constituency, or occupying business premises in the constituency, as the case may be; and (b) must during the whole of the qualifying period have resided in premises, or occupied business premises, as the case may be, in the constituency, or in another constituency within the same parliamentary borough or parliamentary county, or within a parliamentary borough or parliamentary county contiguous to that borough or county, or separated from that borough or county by water, not exceeding at the nearest point six miles in breadth, measured in the case of tidal water from low-water mark.

"For the purposes of this sub-section the administrative county of London shall be treated as a parliamentary borough.

"(3) The expression 'business premises' in this section means land or other premises of the yearly value of not less than ten pounds occupied for the purpose of the business, profession, or trade of the person to be registered."

Local government franchise.—Sect. 2 assimilates the local government franchise of men and women.

"A person shall be entitled to be registered as a local government elector for a local government electoral area if he or she is of full age and not subject to any legal incapacity, and (a) is on the last day of the qualifying period occupying as owner or tenant any land or premises in that area; and (b) has during the whole of the qualifying period so occupied any land or premises in that area, or, if that area is not an administrative county or a county borough, in any administrative county or county borough in which the area is wholly or partly situate; or (c) is the husband or wife of a person entitled to be so registered in respect of premises in which both the person so entitled and the husband or wife, as the case may be, reside."

There are special provisions about persons who occupy a dwelling-house by virtue of office or service, and about lodgers and naval and military voters.

Operation.—Sect. 6 enables the register of electors to be made in 1929 to come into operation on the 1st of May. This is so that the general election of 1929 may take place on the new register. The qualifying period expired 15th December, 1928, for Scotland, and elsewhere 1st December.

Order.—The Order in Council made under the Representation of the People Act, 1918, was altered for the purpose of the 1929 register, and new forms were given. (S. R. & O. 1928, No. 645, price 3*d.*)

Plural voting.—Sect. 4 substitutes a new sect. 8 for that originally in the principal Act, which governs the right of plural voting. Both men and women, when registered for any constituency, are entitled to vote at the election of a member for that constituency, but at a general election neither he nor she may vote more than once by virtue of a residence qualification or more than once by virtue of any other qualification.

University franchise.—Sect. 1 (2) amends the university franchise, and provides a new sect. 2 of the principal Act. A woman, if of full age and not subject to legal incapacity, is entitled to be registered if she has passed the final examination of a university and complied with any condition as to residence, although at the time the university did not admit women to degrees.

Reading University.—The Representation of the People (Reading University) Act, 1928, provides that the provisions of the Representation of the People Act, 1918, shall be read and have effect as if in Part III. of Sched. IX. to that Act the University of Reading were added to the combination of universities consisting of the University of Durham, the Victoria University of Manchester, the University of Liverpool, the University of Leeds, the University of Sheffield, the University of Birmingham and the University of Bristol. [The combination elects two Members of Parliament.]

Unauthorised person incurring expenditure.—Sect. 34 of the Representation of the People Act, 1918, forbids unauthorised

persons to incur expense for the purpose of procuring the election of any candidate at a parliamentary election. At an election where a Conservative, a Liberal and a Labour candidate were standing the appellant incurred expense in urging electors to vote either for the Liberal or Labour candidate, but at any rate against the Conservative. He committed an offence under the section. "Candidate" in the section must be read as including the plural. (*R.* v. *Hailwood*, Ct. of C. Ap.)

RESTRAINT OF TRADE.

Contract avoiding undue competition.—The Courts view restraints of trade imposed between equal contracting parties to avoid undue competition and undue fluctuations in trade with more favour than they regard contracts between master and servant in unequal positions of bargaining. (Per Scrutton, L.J., in *English Hop Growers, Ltd.* v. *Dering.*)

Marketing agency: Exclusive right to sell.—A grower of hops contracted with a limited company, formed to organise the marketing of home-grown hops by their sale through a single selling agency, to sell through the company all hops produced by him. The Court of Appeal held that this contract was not void as being in restraint of trade and that the contract was broken by a sale of the land on which the hops grew at a time when the crop was already pickable. There was nothing unreasonable in hop growers combining to secure a steady and profitable market price by eliminating competition amongst themselves. (*English Hop Growers, Ltd.* v. *Dering.*)

"Not to practise as a solicitor."—It is not a breach of a covenant "not to practise as a solicitor" within prescribed limits for a solicitor to act as managing clerk to another solicitor within the prescribed limits. Such a covenant, being in restraint of trade, must be construed strictly. The natural meaning of "practising as a solicitor" is that the person acts as a solicitor in such circumstances that the relationship of solicitor and client arises between himself and the persons whose affairs he is transacting. (*Way* v. *Bishop*, C. A.)

Price maintenance agreement.—A. signed B.'s price maintenance agreement whereby, in consideration of his being placed on B.'s wholesale list and allowed the wholesale discount, he agreed not to sell B.'s soap, "howsoever acquired," to the public under sixpence a tablet. The agreement was held good. An agreement to maintain prices is not necessarily against public policy, and a restraint reasonable in the interests of the parties, as this was, will not be held unenforceable because it involves some injury to the public. (*Palmolive Co. (of England), Ltd.* v. *Freedman*, C. A.)

RESTRICTIVE COVENANTS.

Modification and discharge.—See sect. 84 of the Law of Property Act, 1925, the Law of Property (Restrictive Covenants, Discharge and Modification) Rules, 1925 (S. R. & O. 1925, No. 1182/L. 36, price 2*d.*), the Fees Rules (S. R. & O. 1925, No. 1272/L. 48, price 1*d.*) and *Feilden* v. *Byrne*.

Registration.—See sect. 10 of the Land Charges Act, 1925.

RIGHT OF WAY.

In a case where there was evidence of user as of right of a track for sixty years by persons passing from a highway to a public bridle path, Tomlin, J., concluded from this evidence that the track had been dedicated to the public, inasmuch as within living memory it had been used as of right. (*Hue* v. *Whiteley*, Tomlin, J.; *Att.-Gen.* v. *Antrobus*, (1905) 2 Ch. 188, distinguished.)

ROAD FUND.

Temporary advances may be made by the Treasury to the Road Fund. (Finance Act, 1928, s. 27.)

ROAD VEHICLES.

Lighting: General provisions and application.—The Road Transport Lighting Act, 1927, which applies to England and Scotland but not Northern Ireland (sect. 16), contains further regulations as to the lighting of vehicles during "hours of dark-

ness," *i.e.*, (a) in summer time, the time between one hour after sunset and one hour before sunrise, and (b) in the rest of the year, the time between half an hour after sunset and half an hour before sunrise. (Sect. 1 (4).) The Minister of Transport is given wide powers of issuing regulations (sects. 1 (2) and (3), 3 and 9), but subject to regulations and to the provisions of the Act every vehicle on any road during the hours of darkness must carry—(a) two lamps, each showing to the front a white light visible for a reasonable distance; (b) one lamp showing to the rear a red light visible for a reasonable distance.

It is the duty of any person who causes or permits a vehicle to be on any road during the hours of darkness to provide the vehicle with such lamps. (Sect. 1 (1).) No vehicle may show a red light to the front, or any light other than a red light to the rear; but the latter prohibition does not extend to lamps carried for internal illumination or for illuminating a number plate, &c., or, in the case of public service vehicles, for illuminating destination boards, &c. (Sect. 2.) The Act applies to vehicles of all descriptions, except railway locomotives, carriages and trucks, tramcars and trolley vehicles. (Sect. 14.) "Road" means any public highway and any other road to which the public has access. (Sect. 15.)

Numerous Acts are repealed, orders and bye-laws made under statutory authority are rescinded and the power to make them is abolished. (Sect. 11.)

Lighting: Penalties and special defence.—Penalties are prescribed by sect. 10. If any person causes or permits any vehicle to be on any road in contravention of the Act or regulations, or otherwise fails to comply with the Act or regulations, he is liable on conviction by a Court of summary jurisdiction for each offence to a 5*l.* fine, or for a second or subsequent offence a 20*l.* fine. But a person driving or in charge of a vehicle cannot be convicted if he proves that the offence arose through the negligence or default of some other person whose duty it was to provide the vehicle with a lamp or lamps. The fines go to the Exchequer. (Finance Act, 1928, s. 28 and 5th Sched., repealing sect. 13 of the 1927 Act.)

Lighting: Regulations.—The Road Vehicles Lighting Regulations, 1928 (S. R. & O. 1928, No. 286, price 1*d.*), were made by the Minister of Transport under the above Act.

Additional lamps.—By Regulation 5, subject as thereinafter provided, it is lawful for a vehicle to carry not more than two lamps showing a light to the front so fitted that the beam of light emitted from any such lamp is moved in conformity with the front wheels of the vehicle when they are turned for the purpose of steering the vehicle, provided that (a) such lamps are additional to the obligatory front lamps; (b) the angle through which the beam of light is moved as aforesaid does not exceed the angle through which the front wheel of the vehicle, on the side towards which the vehicle is being steered, is turned for the purpose of steering the vehicle; (c) the centre of any such lamp is not more than 3 feet 3 inches above the ground.

Hand-carts.—By Regulation 4 (1), if a vehicle drawn or propelled by hand is, together with its load, not more than $2\frac{1}{2}$ feet in greatest width, not more than 6 feet in greatest length, and not more than 4 feet 6 inches in greatest height, it is not necessary for such vehicle to show any lights, provided that it is kept when in use on a road during the hours of darkness as near as possible to the left-hand edge of the carriage-way.

(2) If a vehicle drawn or propelled by hand, together with its load, exceeds any or all of the dimensions set out in paragraph 1 of this Regulation, but does not exceed 4 feet in greatest width, it is not necessary for such vehicle to carry more than one lamp showing a white light to the front.

(3) A separate lamp showing a red light to the rear is not required to be carried by a vehicle drawn or propelled by hand if an unobscured and efficient red reflector is carried, or if the obligatory front lamp or each of the obligatory front lamps, as the case may be, shows also a red light to the rear visible from a reasonable distance, and neither the vehicle nor any load carried thereby extends more than 6 feet behind such lamp or lamps.

Parking places.—Regulation 6 enables the Chief Officer of Police of any police area to consent to the use of certain parking places for the parking of vehicles without lights.

Position of lamps.—By Regulation 2 (1) every lamp showing to the front a white light required to be carried on any vehicle under the Act and the Regulations (such lamps being in the Regulations referred to as "obligatory front lamps") must, (a) except in the case of a bicycle, be so fixed that no part of the vehicle or its equipment extends laterally on the same side as the lamp more than 12 inches beyond the centre of the lamp; and (b) in the case of vehicles drawn by horses or other animals be so fixed that the centre of the lamp is not in the case of such a vehicle having only one axle in rear of that axle, and in the case of such a vehicle (other than a brougham) having more than one axle more than 1 foot 6 inches behind the front axle when in its central position.

(2) Where two obligatory front lamps are carried on any vehicle they must be fixed on opposite sides of the vehicle and, except in the case of a bicycle having a sidecar attached thereto, be as nearly as possible of the same power and fixed at the same height from the ground.

(3) Where only one obligatory front lamp is carried on any vehicle that lamp shall (except in the case of a bicycle) be fixed on the off-side of the vehicle.

(4) Save where in accordance with the provisions of the Act and these Regulations, a separate lamp showing a red light to the rear is not carried on any vehicle, the lamp showing to the rear a red light required to be carried on any vehicle under the Act and these Regulations must be so fixed that it is either on the centre line or on the off-side of the vehicle.

Reflectors.—Every red reflector carried on any vehicle in pursuance of the provisions of the Act or of these Regulations (a) must comply with a technical test laid down in Regulation 3 (a); and (b) the aperture (or, if more than one, each aperture) of the frame of the reflector if circular must have a diameter of not less than $1\frac{1}{4}$ inches, and if not circular shall be of such a size that a circle of $1\frac{1}{4}$ inches diameter may be inscribed therein; and (c) the reflector must be fixed to the vehicle (i) in a vertical position and facing squarely to the rear; (ii) not less than 15 inches above the ground and either on the centre line or on the off-side of the

vehicle; and (iii) so that no part of the vehicle projects more than 20 inches to the rear of the reflector.

Showmen's tractors and heavy locomotives.—See the Road Vehicles (Showmen's Tractors and Heavy Locomotives) Amendment Regulations, 1928. (S. R. & O. 1928, No. 679, price 1*d.*)

Lighting: Special provisions.—The Minister may wholly or partially exempt from this provision certain vehicles, *e.g.*, vehicles standing or parked in places specially set aside for the purpose, or drawn or propelled by hand (sect. 1 (2), *and see under* REGULATIONS, *supra*), and he may make special regulations, *e.g.* as to colours, in case of public service vehicles, and vehicles used for naval, military, air force or police purposes. (Sect. 1 (3).) Special provisions are contained in sect. 5 as to bicycles (see p. 31, *ante*), tricycles and invalid carriages. Horse-drawn vehicles are within the Act, but the Act as applied to them is subject to modifications specified in sect. 6. Special provisions apply to vehicles carrying overhanging or projecting loads (sect. 7), and to vehicles towing and being towed. (Sect. 8.)

ROMAN CATHOLICS.

Relief.—See Roman Catholic Relief Act, 1926.

ROYAL TITLE.

This is now "George V., by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India." (Royal and Parliamentary Titles Act, 1927.)

SAFEGUARDING.

Safeguarding of industries was introduced by the Safeguarding of Industries Act, 1921. The present position is as follows:—

Exemptions.—These fall under three heads:—

(i) *Ingredient parts of articles.*—The Finance Act, 1922, s. 10, enabled the Board of Trade to exempt certain compound articles; certain toys, chemical preparations, &c. were exempted (S. R. & O. 1923, No. 149), and cadmium mass (S. R. & O. 1927, No. 368).

(ii) *Small value.*—Power to exempt was given by the Safeguarding of Industries, &c. Act, 1925, s. 1 (4), and Sched., and exercised as to cheap knives and scissors (S. R. & O. 1926, No. 567), toys, &c. (S. R. & O. 1926, No. 1173), and telescopes and optical lanterns of small value (S. R. & O. 1926, No. 1174), and children's toy sets and fancy articles (S. R. & O. 1927, No. 760).

(iii) *Articles not made in sufficient quantities in His Majesty's dominions.*—The Treasury may exempt these (Finance Act, 1926, s. 10 (5)), and have made an Order exempting the following articles from duty from December 1st, 1928, to December 31st, 1929: Celtium oxide, Chinosol, Dicyandiamide, Dysprosium oxide, Erbium oxide, Europium oxide, Gadolinium oxide, Holmium oxide, Lutecium oxide, Samarium oxide, Terbium oxide, Thulium oxide, Ytterbium oxide. This Order also continues till December 31st, 1929, an exemption from duty of: Acid hydrocyanic anhydrous, Acid lactic which satisfies the requirements of the British Pharmacopœia, Acid oxalic, Amidopyrin (Pyramidon, Dimethyl-amidoantipyrine), Ammonian perchlorate, Barbitone (Veronal, Malonal, Malourea, Acid diethyl barbituric, Diethylmalonylurea, Hypnogen, Deba), Bromural (Dormigene), Cocaine crude, Dial (Acid diallyl barbituric), Didial (Ethyl morphine diallyl barbiturate), Elbon (Cinnamoyl para oxyphenyl urea), Ethylene bromide, Eukodal, Furfurol, Glycol ethers, Guaiacol carbonate (Duotal), Hydroquinone, Integrators (planimeter type), R. Lead acetate, Lead tetra-ethyl, Lipolodin, Lithium carbonate, Lithium hydroxide, Metaldehyde, Methyl chloride, Methyl sulphonal (Diethylsulphonemethylethylmethane, Trional), Nickel hydroxide, Papaverine, Phenacetin (Acetparaphenetidine), Phenazone (Antipyrine, Phenyldimethylpyrazolone, Analgesin, Anodynine, Dimethyl oxychinizin), Phytin, Piperazine (Diethylene-diamine, Dispermin), Planimeters, R. Potassium chlorate, Potassium guaiacol sulphonate (Thiocol), R. Potassium hydroxide (R. Potassium caustic, R. Potassium hydrate), R. Potassium permanganate, Pyramidon-veronal, Quinine ethylcarbonate, Resorcine (Resorcinol), Salol (Phenyl salicylate), Styracol (Guaiacol cinnamate),

Sulphonal, Synthalin, Urea (Carbamide), Vanadium-silica compounds specially prepared for use as catalysts for sulphuric acid manufacture. (S. R. & O. 1928, No. 927, price 1*d.*)

(iv) *Empire goods* receive preferential treatment.

Key industries.—These were dealt with in Part I. of the Act of 1921. The Board of Trade was empowered to issue lists defining articles to be taken as falling within the general descriptions scheduled to that Act upon which duties were to be charged. This power has not been exercised in S. R. & O. form. This Part of the Act was due to expire on 19th August, 1926, but was extended for ten years. (Finance Act, 1926, s. 10 (1).) The duties chargeable were increased from one-third to one-half of the value of the goods. (*Ibid.* s. 10 (2).) Part I. was extended to other goods. (*Ibid.* s. 10 (3).)

List of articles chargeable under Part I., corrected to April, 1928, was published by the Stationery Office. (51-0106-00-00, price 1*s.*)

Prevention of dumping.—By Part II. of the Act of 1921 the Board of Trade was enabled to refer to a committee complaints of unfair competition by foreign countries. Rules for procedure of the committee were laid down by S. R. & O. 1922, No. 90. A change in procedure is forecasted. Certificates to be given by a consignor of goods to which the Act applies were prescribed by S. R. & O. 1922, No. 865, and S. R. & O. 1923, No. 1311. Duties were imposed by the Safeguarding of Industries (Customs Duties) Act, 1925, on cutlery, gloves and mantles, and by the Finance Act, 1927, s. 9 (2), on translucent and vitrified pottery.

SALE OF GOODS.

Agricultural produce.—Where a "grade designation" is applied on sale, it will be implied that the quality accords with the statutory definition. (See Agricultural Produce (Grading and Marking) Act, 1928, s. 1, *ante*, p. 18.)

Breach of warranty: Sub-sales—Costs—Measure of damages.—If goods are sold by A. to B. with an implied condition of fitness under sect. 14 of the Sale of Goods Act, 1893, and

are subsequently similarly sold and resold, the ultimate buyer recovering damages for breach of the condition in an action reasonably but unsuccessfully defended by the ultimate seller, the costs recovered against the ultimate seller can be passed back through the chain of sellers, and finally recovered by B. from A. (*Kasler and Cohen* v. *Slavouski*, Branson, J., not following *Walter Potts & Co.* v. *Brown, Macfarlane & Co.*, an unreported decision of Shearman, J.)

C.i.f. contract.—A c.i.f. contract for the sale of frozen rabbits is not fulfilled by the shipment at the specified port of the bulk of the rabbits seven weeks before the date of the bill of lading, the rest of the goods being shipped on the agreed date when the ship made a return call at the port. (*Foreman and Ellams, Ltd.* v. *Blackburn*, Wright, J.)

It is the seller's duty under a c.i.f. contract to procure and tender to the buyer a bill of lading stating correctly the date of shipment. If the buyer loses his right to reject tender of the documents as a result of the date being incorrectly stated, he is entitled to damages for breach of the seller's duty to deliver a correct bill. (*J. Finlay & Co., Ltd.* v. *Kwik Hoo Tong Handel Maatschappij*, Wright, J., and C. A.)

Damages, measure of.—In a contract for the sale of goods the buyers stipulated for a right to resell. The damages on the sellers failing to make delivery were not confined to the difference between the contract price and the market price at date of the breach, but extended to the loss of profit on a resale and the damages which the buyers had been compelled to pay to their own sub-buyers. (*Re R. & H. Hall, Ltd., and W. H. Pim (Junior) & Co.'s Arbitration*, H. L.)

Price to be paid by instalments: Rescission.—Goods were sold under an agreement by which the price was to be paid by instalments and the property was not to pass till the last instalment was paid. Default having been made in payment of the instalments, the seller rescinded the contract and retained possession of the goods in virtue of a defeasance provision in the contract. It was held that the seller could not afterwards sue for the instalments

remaining unpaid. The only remedy was an action for damages for breach of contract. (*Att.-Gen.* v. *Pritchard and Others,* Swift, J.)

Sale by description.—If the owner of licensed premises supplies, as requested by a customer, a bottle of "Stone's ginger wine," this is a sale by description for the purposes of sect. 14 of the Sale of Goods Act, 1893. There is consequently implied a condition that the article supplied shall be of merchantable quality. If there is a flaw in the bottle and the buyer is injured in consequence, he can sue the seller for damages. (*Morelli* v. *Fitch and Gibbons,* Div. Ct.)

War: Turkey.—For the effect of war on an executory contract for the sale of goods, delivered after the outbreak of war with Turkey, and the Treaty of Peace (Turkey) Order, 1924, and the Treaty of Lausanne, Art. 84, see *Ottoman Bank* v. *Jebara,* H. L.

SAVINGS CERTIFICATES.

Nomination.—An intestate held more than 500 War Savings Certificates. He nominated A. and B. to be recipients after his death of the amount due. The nomination was held good. In their provisions as to nominations, the War Savings Certificates Regulations, 1919, are not *ultra vires* as was argued, for although they did not refer expressly to the Savings Bank Act, 1887, yet a provision of the Act could be applied without naming it. And though the regulations do not allow any one person to hold more than 500 certificates, a nomination is good as to the whole number, even if in excess of 500. (*Re Kimber, Vale* v. *Rockman,* Tomlin, J.)

Treasury borrowing.—For power of the Treasury to borrow money to meet the interest on War Savings Certificates and National Savings Certificates, see sect. 29 of the Finance Act, 1928.

SETTLED LAND: SETTLEMENT.

Act.—The Settled Land Acts, 1882 to 1890, are now replaced with numerous amendments by the Settled Land Act, 1925, which has itself been amended by the Law of Property (Amendment)

Act, 1926. (See "Law Notes" Guide to the New Property Statutes, 2nd ed., with Supplement, January, 1929.)

Clergyman's residence.—Where a house is vested in trustees on trust to permit the minister for the time being of a certain church to reside therein and have the use and enjoyment thereof, the minister is not a tenant for life under the Settled Land Act, 1925. The house is not limited to the ministers in succession within sect. 1 of the Act, but is limited in trust for the church. It is held on a charitable trust and falls within sect. 29 so that the trustees have the statutory powers. (*Re Higgs, Symonds* v. *Rhodes,* Romer, J.)

Compound settlement.—A testator devised Blackacre to X. for life, then to the trustees for the time being of Whiteacre (which was settled by deed) to hold on the same trusts as Whiteacre. The will and deed do not constitute a compound settlement. The will alone constitutes the settlement. This follows *Re Adair,* (1927) W. N. 229. (*Re Shelton's S. E.*, Clauson, J.)

Covenant to settle after-acquired property.—A covenant to settle after-acquired property has no effect at all upon a protected life interest. If the covenantor had to transfer his life interest to the trustees of the settlement, the effect of the covenant would be to destroy the interest, and there would be nothing to transfer. (*Re Smith, Franklin* v. *Smith,* Clauson, J.)

Duration of settlement.—Blackacre was settled by will on A. for life with remainders over. The testator settled his residuary personalty to go along with Blackacre, and empowered the trustees to buy land. The trustees bought Whiteacre, subject to but with an indemnity against a jointure subsisting under a previous settlement of Whiteacre, and Whiteacre was conveyed to them on trust for sale. The jointress died in 1927. It was held that, assuming that Whiteacre was settled land, it was settled by virtue only of the will and the conveyance to the trustees; the compound settlement consisting of the previous settlement of Whiteacre, the will and the conveyance to the trustees was at an end by reason of the death of the jointress. The words "under the settlement" in clause (a) of sect. 3 of the Settled Land Act, 1925,

must mean "under the settlement deemed to be subsisting." It was also held that any land purchased by the trustees of the will in future must be conveyed in the form of a conveyance creating a settled estate and not a trust for sale. (*Re Draycott S. E.*, Tomlin, J.)

Improvements.—The Court can authorise repayment to the tenant for life out of capital money of the expenses incurred by him before 1926 in making an improvement (electric light installation) which was not authorised by the Settled Land Acts, 1882 to 1890, but is authorised by the Settled Land Act, 1925. So held on the construction of sects. 83 to 88 of the Settled Land Act, 1925. A rebate, however, was ordered to meet the diminution in the value of the improvement owing to the lapse of time. The tenant for life also claimed to be paid 1,000*l.*, part of the purchase-money received on a sale of a farm, alleging that this sum was properly attributable to tenant right valuation, and was due to him for improvements to the land carried out by him at various times before the sale. But this claim was disallowed. (*Re Lord Sherborne's S. E.*, Tomlin, J.)

Settled land or not?—A testator gave land to trustees on trust to accumulate the income to pay off certain mortgages, and after payment to pay the income to his grandchildren for life, and after the decease of the survivor, on trust to sell. Under this limitation the land is settled land, and the grandchildren have the powers of a tenant for life under sect. 20 (1) (viii) of the Settled Land Act, 1925. *Re Stamford and Warrington*, (1927) 2 Ch. 217, distinguished. (*Re Stevens and Dunsby's Contract*, Romer, J.)

Settled land or trust for sale?—If at the death of a tenant for life the land is, subject to jointure and portions, to be held on trust for sale, the settlement does not end on the death of the tenant for life. Under a compound settlement, starting with a deed of 1894, land stood limited on the 31st December, 1925, to A. for life, and after his death, subject to a jointure and portions, to X. and Y. on trust for sale. The trust for sale was created by a deed of 1911, which gave to X. and Y. all the powers of a tenant for life. M. and N., as trustees of the deed of 1894, were trustees

of the compound settlement. A vesting deed was executed in favour of A., and A. died in 1926. Probate, limited to the settled land, was granted to M. and N. on the footing that the settlement did not come to an end at A.'s death. Romer, J., held that this was right. The whole legal estate, the subject of the settlement, was not held upon trust for sale; the land continued to be settled land, and X. and Y. were statutory owners by virtue of sect. 23 of the Settled Land Act, 1925. They could call for a conveyance of the legal estate from M. and N., but as statutory owners and not as trustees for sale, so that on their selling, the purchase-money would have to be paid to M. and N. as trustees of the settlement. (*Re Norton, Pinney* v. *Beauchamp,* Romer, J.)

A testator directed the trustees of his will to buy a dwelling-house as a residence for his wife until a certain event occurred, whereupon the house was to fall into the residue, which was given on trust for sale. A house was bought; it was held that it was not held on immediate trust for sale. The fact that the house was to be a residence for the wife was inconsistent with an immediate trust for sale, and sect. 32 of the Law of Property Act, 1925, was, therefore, excluded. The will created a settlement of the house, and the widow had the powers of a life tenant under sect. 20 of the Settled Land Act, 1925. (*Re Hanson, Hanson* v. *Eastwood,* Astbury, J.)

Meaning of "immediate binding trust for sale."—Under the will of a testator, who died in 1888, land was settled on P. for life, with remainder to his son in tail, with power for P. to charge a jointure and portions on the land. In 1901 P. charged the land with a jointure to his wife without power of anticipation and limited a term of 1,000 years from his death to trustees for raising portions. In 1924 P.'s eldest son disentailed and immediately afterwards P. and his eldest son conveyed to trustees on trust to sell and hold the proceeds and the rents until sale on certain trusts, under which P. was entitled for his life. P.'s wife joined in to release her jointure in spite of the restraint on anticipation, and the trustees of the portions term to release the term, though they had no power to do so. This release was ineffective. Held that the land was settled land under the compound settlement and P. was tenant for life. Owing to the outstanding legal term, the

"land" was not held on trust for sale so as to be outside the Settled Land Act, 1925. The words "trust for sale," when used with reference to land subject to prior equitable interests, are not confined to cases where the trustees for sale can overreach the equitable interests. The word "binding" in the statutory definition of "trust for sale" does not exclude a "trust for sale" as usually understood. Tomlin, J.'s, decision in *Re Leigh's S. E.* (No. 1), (1926) Ch. 852, dissented from. (*Re Parker's S. E.*, Romer, J.)

Stamp on voluntary settlement.—Once sect. 74 of the Finance (1909—10) Act, 1910, comes into play, the value of the property conveyed and not the value of the interests of the transferees decides the stamp. Thus, if under a re-settlement benefits are voluntarily transferred to various persons subject to an overriding power of appointment in the settlor, the commissioners being of opinion that the re-settlement operates as a voluntary disposition *inter vivos* within sect. 74 of the Finance (1909-10) Act, 1910, the stamp duty payable will be *ad valorem* on the value of the property conveyed. It was argued unsuccessfully that the stamp should be 10*s.* on the ground that, owing to the overriding power, the interest of the transferees was of negligible market value. (*Earl of Westmoreland* v. *Commissioners of Inland Revenue,* C. A.)

Tenant for life: Determinable interest.—A leasehold house, with all the contents, was given by a testator to trustees on trust for A. for life, or so long as she wished to continue to reside there. Owing to ill-health, she went to reside abroad, and first let and then sold the house and the trustees sold the contents. She was entitled to the income of the proceeds of sale of the house and the contents, for she had the powers of a tenant for life under the Settled Land Act, 1925, and any provision in the will which limited or prevented their exercise was void under sect. 106 of the Act. (*Re Acklom, Oakeshott* v. *Hawkins,* Maugham, J.)

Tenant for life: Resulting trust.—A testator gave the trustees of his will a discretionary trust to pay the income of his real estate to A. for life, but did not dispose of any income which might not be paid to A. Consequently there was a resulting

trust for the testator's heir. It was held that the heir had not the powers of a tenant for life under sect. 20 (1) (viii) of the Settled Land Act, 1925, although "trust" in that paragraph includes resulting trust. (*Re Llanover S. E.*, (1926) Ch. 626.) The scheme of the Act is to give the powers to the person having the effective possessory ownership of the estate and not to a person whose interest in the estate is so unsubstantial as that of the heir in this case. (*Re Alston-Roberts-West's S. E.*, Clauson, J.)

SHIPS: SHIPPING.

Anchor in navigable river.—Where an anchor is cast in a public navigable river so that at low water it is a danger to other shipping, the owner is under a duty at common law to give warning by buoys or otherwise. (*The Harkaway*, Bateson, J.)

Bail.—The effect of taking bail is to release a ship altogether, and a warrant of arrest to enforce additional bail after judgment (for which the bail given did not suffice) was set aside. (*The Point Breeze*, Bateson, J.)

Bill of lading: Construction.—A clause in a bill of lading giving "liberty to touch at any port whatsoever although outside the route" does not authorise the vessel's sailing east to pick up cargo when the route lies west. (*Frenkel* v. *MacAndrews & Co., Ltd.*, Rowlatt, J.)

Carriage of Goods by Sea Act, 1924: Management of hatches.—Boxes of tinplate were shipped from this country to a foreign port under a bill of lading, and were injured by rain entering through the negligence of the ship's officers and their deputies in failing to deal properly with the ship's hatches while the ship was under repair after collision. The shipowners were held not liable for the loss. Under Art. IV. r. 2, of the Schedule to the Carriage of Goods by Sea Act, 1924, "neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from the act, neglect or default of the master, mariner, pilot or servants of the carrier . . . in the management of the ship." Here "management of the ship" means management of the ship as a ship, and not the general carrying on of the business of transport by sea. It does not include management of the hatches. (*Gosse*

Millard, Ltd. v. *Canadian Government Merchant Marine, Ltd.*, H. L.)

Carriage of Goods by Sea Act, 1924: Refrigerating machinery.—Art. IV. r. 2 of the Carriage of Goods by Sea Act, 1924, which exempts the shipowner from liability for the negligence of his servants "in the management of the ship" does not include in the exception the management of refrigerating machinery. The words "management of the ship" are only concerned with matters directly affecting the ship as a ship, and not with matters affecting exclusively or even primarily the cargo. [N.B.—This case was decided upon the Sea Carriage of Goods (Australia) Act, 1924, which is identical in terms with the British statute. It accords with the subsequent decisions of the House of Lords mentioned in the preceding paragraph.] (*Foreman and Ellams, Ltd.* v. *Federal Steam Navigation Co., Ltd.*, Wright, J., Com. Ct.)

Collision: Costs on appeal to the House of Lords.—Where, on appeal to the House of Lords in a case of collision at sea, both vessels are found to blame, the rule which prevails on the point in the Court of first instance and in the Court of Appeal, under which each party bears his own costs, is also the rule in the House of Lords. Where both vessels are found to blame, no order as to costs should be made. (*Owner of S.S. Canton* v. *Owners of S.S. Rhesus,* H. L.)

Collision: Damages.—For the effect of Government restriction of imports upon the measure of damages resulting from a ship being detained for repairs after a collision, see *The Ikala,* C. A.

Collision regulations.—To comply with the directions to "stop" and then "navigate with caution" in Art. 16 of the Collision Regulations a vessel should run her way off and bring herself as nearly as possible to a standstill. A vessel which alleged that, on hearing the fog whistle of the other vessel, she went dead slow by stopping her engines and then putting them slow ahead, and so continued alternatively stopping and going slow ahead was not complying with the provisions of the Article. (*The Union,* Bateson, J.)

Costs: Appeal from Colonial Court.—On an appeal from a Colonial Court of Formal Investigation the Board of Trade appears merely in discharge of a public duty, and costs ought not to be awarded against the Board (following *The Grecian,* (1902), Jeune, P., previously unreported); but if the Board contests a matter raised in the public interest (here the right to appeal) costs may be ordered. (*The Royal Star* (No. 2), Div. Ct.)

Damage to harbours, &c.—Sect. 74 of the Harbours, Docks and Piers Clauses Act, 1847, which makes the owner of a vessel amenable to the underwriters for damage done to a harbour, dock, &c. creates an absolute liability in cases where the vessel was at the time the damage was done under the direction of the owners or their agents whether there is negligence or not. (*The Mostyn,* H. L.)

Discharge of cargo: Port of London custom.—If a charter-party provides that a cargo of timber carried into the Port of London is to be "taken from alongside the steamer at the charterers' risk and expense as customary," the shipowners and not the charterers must bear the expense of discharging the cargo on to the quay or into lighters. The custom of the Port of London is that the shipowner is bound to unload the timber on to the quay and stack it there, or, if it is delivered into lighters, to deliver and stow it in lighters sent alongside by the receivers. There is no inconsistency between the custom and the terms of the charter-party, for timber discharged on to the quay or into lighters is "alongside" the ship. (*Smith, Hogg & Co.* v. *Louis Bamberger & Sons,* C. A.)

Light Dues.—By the Merchant Shipping (Light Dues) Order, 1928, the dues authorised to be levied in accordance with the scale set out in the 2nd Sched. to the Merchant Shipping (Mercantile Marine Fund) Act, 1898, are subject to an increase of 30 per cent., and the payments referred to in the proviso to Rule 1 and in the proviso to Rule 7 of the Rules set out in the 2nd Sched. to the said Act are also subject to an increase of 30 per cent. (S. R. & O. 1928, No. 564, price 1*d.*)

Line-throwing appliances.—The Merchant Shipping (Line-throwing Appliance) Act, 1928, extends the power of the Board

of Trade, under sect. 427 of the Merchant Shipping Act, 1894, to make rules for life-saving appliances. The Board may make rules with respect to the number, description, and mode of construction of line-throwing appliances to be carried by British ships according to the class in which they are arranged.

Passenger steamer certification: Hong Kong.—The certificates granted in Hong Kong for foreign-going passenger steamers are of the same force as if they had been granted for the like purpose in the United Kingdom under the Merchant Shipping Act, 1894, and all the provisions of Part III. of the Merchant Shipping Act, 1894, which relate to passenger steamers' certificates apply, without modification, to the certificates for foreign-going passenger steamers granted in Hong Kong. (The Merchant Shipping Passenger Steamers (Hong Kong) Order, 1928, S. R. & O. 1928, No. 250, price 1*d.*)

Pilotage: Lerwick.—See Lerwick Pilotage Order, 1928. (S. R. & O. 1928, No. 330, price 1*d.*)

Pilotage: Pilotage Act, 1913, s. 11 (1).—The word "port" in this section is defined by reference to the Merchant Shipping Act, 1894, s. 742, as including "place"; but the *ejusdem generis* rule applies, so that "place" only means a "place" having some of the characteristics of a port. (*Humber Conservancy Board* v. *Federated Coal and Shipping Co., Ltd.*, Div. Ct.)

Pilotage: Returns.—See Pilotage Authorities (Returns) Amendment Order, 1928. (S. R. & O. 1928, No. 83, price 1*d.*)

Portugal: Load-line.—An Order in Council, dated March 22nd, 1928, exempted Portuguese ships complying with Portuguese regulations from detention for non-compliance with the provisions of the Merchant Shipping Acts as to overloading. (S. R. & O. 1928, No. 251, price 1*d.*)

Safety of life at sea.—See the International Convention for Safety of Life at Sea. (S. R. & O. 1927, No. 1183, price 1*d.*)

An Order in Council, dated November 20th, 1928, postponed the commencement of the Merchant Shipping (Convention) Act, 1914, until January 1st, 1930.

Warlike operations.—A collision between two vessels, one of which was a United States' minelayer, could be a consequence of warlike operations although it occurred six weeks after the Armistice. Notwithstanding the Armistice, the blockade continued, German ships at sea were liable to capture and active war might have been revived in full severity. (*Hain Steamship Co., Ltd.* v. *The Board of Trade,* C.A.)

Warlike operations: Charter-party T. 99.—Damage resulting from the defective stearing gear of a vessel sailing in convoy was held not to be due to a warlike operation within clause 18 of this charter-party. (*Clan Line Steamers, Ltd.* v. *Board of Trade,* C. A.)

Wireless telegraphy.—See the Merchant Shipping (Wireless Telegraphy) Rules, 1927 and 1928. (S. R. & O. 1927, No. 529, and 1928, No. 499, and 1928, No. 899, price 1*d.* each.)

Wreck in river: Negligence.—A ketch having sunk in the River Dee owing to the defendants' negligence, they abandoned it. As the wreck obstructed the navigation of the river the Conservators removed it and recovered their reasonable expenses. The defendants, having been negligent, were liable at common law for the damage caused by obstructing the river, and they could not escape this liability by abandoning the wreck. (*Dee Conservancy Board and Others* v. *McConnell,* C. A.)

SHOPS.

Hours of closing.—The Shops (Hours of Closing) Act, 1928, repeals the whole of the Shops (Early Closing) Acts, 1920 and 1921, and sect. 5 (4) and (5), sect. 12 (1) (c) and the Third Schedule of the Shops Act, 1912, and substitutes new provisions as to the closing of shops.

Sect. 1 provides that—(1) Every shop shall, save as otherwise provided by this Act, be closed for the serving of customers not later than nine o'clock in the evening on one day in the week (in this Act referred to as "the late day"), and not later than eight o'clock in the evening on any other day in the week, and those hours are in this Act referred to as the "general closing hours."

(2) The late day shall be Saturday unless the local authority by order fix some other day as the late day, and any such order may fix the same day for all shops, or may fix (a) different days for different classes of shops; or (b) different days for different parts of the district; or (c) different days for different periods of the year: Provided that, where the local authority have under the Shops Act, 1912 (hereinafter referred to as "the principal Act"), fixed any day as the weekly half-holiday for any class of shop, or for any part of their district, or for any period of the year, they shall, as respects that class, part, or period, fix some other day as the late day.

(3) Nothing in this Act or in any closing order made under the principal Act shall prevent (a) the serving of a customer where it is proved that the customer was in the shop before the closing hour, or that reasonable grounds existed for believing that the article supplied after the closing hour to a customer was required in the case of illness; or (b) any transaction mentioned in the First Schedule to this Act.

[The Schedule runs as follows:—

Transactions not prevented by this Act or by Closing Orders made under the Principal Act.

1. The sale after the closing hour of—

(a) Meals or refreshments (including table waters, sweets, chocolates, sugar confectionery, and ice cream), for consumption on the premises, or (in the case of meals or refreshments sold on railway premises) for consumption on the trains: Provided that (i) in the case of canteens attached to and situated within or in the immediate vicinity of any works, if persons are employed at such works after the closing hour, and the canteen is kept open only for the use of such persons, meals or refreshments may be sold after the closing hour for consumption anywhere within the works premises; and (ii) for the purposes of the foregoing provisions tobacco supplied at a meal for immediate consumption shall be deemed to form part of the meal.

(b) Newly cooked provisions and cooked or partly cooked tripe to be consumed off the premises.

(c) Intoxicating liquors to be consumed on or off the premises.

(d) Tobacco, table water or matches on licensed premises during the hours during which intoxicating liquor is permitted by law to be sold on the premises.

(e) Tobacco, matches, table waters, sweets, chocolates, or other sugar confectionery or ice cream, at any time during the performance in any theatre, cinema, music hall, or other similar place of entertainment so long as the sale is to a *bonâ fide* member of the audience and in a part of the building to which no other members of the public have access.

(f) Medicine or medical or surgical appliances, so long as the shop is kept open only for such time as is necessary for serving the customer.

(g) Newspapers, periodicals and books from the book-stalls of such terminal and main line stations as may be approved by the Secretary of State.

(h) Aircraft, motor, or cycle supplies or accessories for immediate use, so long as the shop is kept open only for such time as is necessary for serving the customer.

(i) Victuals, stores or other necessaries required by any naval, military or air force authority for His Majesty's forces or required for any ship on her arrival at or immediately before her departure from a port, so long as the shop is kept open only for such time as is necessary for serving the customer.

2. The transaction after the closing hour of any post office business.]

Sect. 2 contains special provisions as to **table waters and confectionery.** It provides that, subject as hereinafter provided, as respects the trade or business of selling table waters, sweets, chocolates, or other sugar confectionery or ice cream, the general closing hours shall be ten o'clock in the evening on the late day and half-past nine o'clock in the evening on any other day:

Provided that a local authority may, in their area or in any part thereof, by order substitute for either of the general closing hours hereinbefore in this section mentioned an earlier hour, not being earlier than eight o'clock in the evening, if they are satisfied that such an order is desired by the occupiers of a majority of the shops to be affected by the order.

Sect. 3 contains special provisions as to **tobacco and smokers' requisites.** It provides that, as respects the trade or business of selling tobacco and smokers' requisites, a local authority may, in their area or in any part thereof, by order substitute for the general closing hours fixed by this Act later hours, not being later than ten o'clock in the evening on the late day or half-past nine o'clock in the evening on any other day, if they are satisfied that such an order is desired by the occupiers of at least two-thirds in number of the shops to be affected by the order.

Sect. 4 provides that, save as in this Act otherwise expressly provided, nothing in this Act shall affect (a) any closing order in force at the commencement of this Act fixing closing hours earlier than the general closing hours fixed by or under the provisions of this Act; or (b) the power of a local authority by a closing order made and confirmed in manner provided by the principal Act to fix, subject to the limits imposed by that Act, closing hours earlier than the general closing hours fixed by or under the provisions of this Act:

Provided that any closing order, whether made before or after the commencement of this Act, shall be of no effect in so far as it authorises sales after the general closing hours fixed by or under the provisions of this Act or contains provisions inconsistent with the provisions of this Act.

Sect. 5 gives the local authority power to substitute later closing hours (not being later than 10 p.m.) in respect of exhibitions and shows.

Sect. 6 contains special provisions as to places frequented as **holiday resorts** during certain seasons of the year, and places where **sea fishing** is principally carried on during certain seasons of the year.

Sect. 7 gives the Secretary of State authority by order for such periods as he thinks fit to suspend the operation of the provisions of this Act relating to general closing hours during the Christmas season or in connection with any other special occasion. It also authorises a local authority, in connection with any special occasion, to suspend the operation of the provisions of this Act relating to general closing hours and the provisions of any

closing order made by them under the principal Act for such period as they may think fit, but not for more than seven days in the aggregate in any year.

Sect. 8 provides that in the case of any contravention of or failure to comply with any of the provisions of this Act or of a closing order made under the principal Act, or in the case of any breach of a condition imposed by any order made under this Act, the occupier of the shop shall be guilty of an offence against the principal Act and liable to a fine not exceeding (a) in the case of a first offence, five pounds; (b) in the case of a second or subsequent offence, twenty pounds.

Sect. 9 makes some consequential and minor amendments of the principal Act.

SMALL HOLDINGS.

The Small Holdings and Allotments Acts, 1908 to 1919, were amended by the Small Holdings and Allotments Act, 1926.

SOLICITORS.

Account by.—If on a summons against a solicitor for delivery of an account under Ord. LII. r. 25, the solicitor alleges that he has a claim for costs, the Court may direct taxation, the words "the taxation and" now being inserted in the rule by Rule 4 of the Rules of the Supreme Court (No. 1), 1928.

Articles: Four years' service.—By a regulation dated 20th July, 1928, four years' service only is required of a person who has passed in the First Division at the Matriculation Examination of the University of London: Provided that—

(a) Latin shall be one of the subjects taken, and if Latin is not a compulsory subject the Examination Certificate shall state that the candidate has passed in Latin.

(b) All the subjects required to be taken by a candidate shall be taken at one Examination, and the Examination Certificate shall state that they have been so taken.

(c) No alternative lower paper shall have been taken.

(d) If any alteration be made in the existing character, standard or regulations of or relating to the Examination, or if any alteration is made in the conditions upon which the Certificate is issued, this Order shall immediately thereupon cease to apply to such Examination.

This regulation is substituted for sect. 2 (b) of the Order, dated the 8th February, 1905, which is revoked.

Also, by regulations, dated 16th March, 1928, four years' service only is necessary for a person who has passed the School Certificate Examination (with honours) of the University of Durham, subject to the same conditions as above (with the exception of (c)).

The last-mentioned regulations also provide that any person who, before entering into articles of clerkship, has passed the Matriculation Examination conducted by the Joint Matriculation Board of the Universities of Manchester, Liverpool, Leeds, Sheffield and Birmingham (Latin being one of the subjects taken), or any Examination accepted by the said Joint Board as exempting from that Examination (Latin being one of the subjects taken), and has subsequently to the satisfaction of the University of Manchester, or Liverpool, or Sheffield, or Leeds, attended the full curriculum for the time being prescribed for the Intermediate LL.B. course of one of those Universities, and has passed the Intermediate LL.B. Examination of such University, shall be capable of being admitted and enrolled as a solicitor without serving under articles to a practising solicitor for more than four years.

The regulations dated the 16th July, 1914, the 29th July, 1915, and the 27th January, 1921, respectively, were cancelled.

Authority to receive mortgage moneys.—When a solicitor is authorised by a mortgagee to receive the interest on a mortgage, this does not imply an authority to receive the principal also. A mortgagor had paid money to a solicitor to be applied in satisfaction of a mortgage, the interest on which the solicitor had, with the authority of the mortgagee, been receiving. No deeds were returned to the mortgagor, and the mortgagee was not aware of the transaction; the solicitor misappropriated the

money. Held, that the mortgage had not been discharged. (*Bonham* v. *Maycock,* Roche, J.)

Call to the Bar.—A new regulation has been made hereon as follows:—

A person who has at any time been admitted a solicitor in England may be admitted as a student without having passed any of the Examinations referred to in Regulation 1 and in every case in which he has been a solicitor in practice for not less than five consecutive years, either in England or in any one colony or dependency, and has entirely and *bonâ fide* ceased to be a solicitor and, if on the rolls of any Court, taken his name off the rolls thereof, he may, without keeping any Terms, be examined for call to the Bar and, upon passing the Examination, be called to the Bar:

Provided that such solicitor has given at least six months' notice in writing (but excluding the months of August and September from the computation of each six months) to each of the Inns of Court, and to the Law Society, of his intention to seek call to the Bar, and produces a certificate that he is a fit and proper person to be called to the Bar, signed, if his practice was in England, by two members of the Council of the Law Society, and, if his practice was in a colony or dependency, by the Chief Justice of such colony or dependency:

Provided also that before his admission as a student such solicitor has ceased to have any capital invested in the business with which he was formerly connected, or to be in any way interested therein, or to have his name connected therewith and makes a declaration to that effect.

Any person desiring to take advantage of this regulation is to pay the sum of 5*l*. 5*s*. for the forms of notice required by this regulation, in addition to the usual students' fees on admission to an Inn of Court.

Costs of further charge: Death of mortgagor.—Solicitors are entitled to charge the scale fee in respect of a further charge when, since the mortgage, the mortgagor has died and the further advance is being made to his executors. Although the solicitors

investigated the mortgagor's title when the original mortgage was made, they had to investigate the executors' title for the purpose of the further charge. It is impossible in such a case to say that "the title was investigated by the same solicitor" within the meaning of Rule 10 of Schedule I., Part I., of the Solicitors' Remuneration Order. (*Re Coward, Chance & Co.*, Russell, J.)

Intermediate Examination: Exemption.—The Council of the Law Society made the following regulations, dated 9th March, 1928, as to exemptions from the Intermediate Examination under sect. 6 of the Solicitors Act, 1877, and sect. 3 of the Solicitors Act, 1894.

The following persons shall be exempted from the Society's Intermediate Examination, other than such part of the Examination as relates to Trust Accounts and Book-keeping, viz.:—

(1) Persons who before or after entering into articles of clerkship have passed the examination required for the degree of B.C.L. or LL.B. at one of the following Universities, viz., Oxford, Cambridge, Dublin, Durham, London, the Victoria University of Manchester, Wales, Birmingham, Liverpool, Leeds, Sheffield, or the Queen's University of Belfast.

(2) Persons who before or after entering into articles of clerkship have obtained the degree of B.C.L. or LL.B. at one of the following Universities, viz., Oxford, Cambridge, Dublin, Durham, London, the Victoria University of Manchester, Wales, Birmingham, Liverpool, Leeds, Sheffield, or the Queen's University of Belfast, after passing the examination required for either of those degrees, or obtaining an Aegrotat certificate in respect of that examination.

(3) Persons who before entering into articles of clerkship have taken Honours in the Final Honour School of Jurisprudence at Oxford or in the Law Tripos at Cambridge.

(4) Persons who before entering into articles of clerkship have obtained the degree of B.A. either (a) after having taken Honours in the Final Honour School of Jurisprudence at Oxford or in the Law Tripos at Cambridge, or (b) after having obtained an Aegrotat certificate in respect of one of these examinations:

Provided that in these regulations the expression "The Law Tripos" shall mean both parts of that examination; or one part of that examination if before or after obtaining Honours or an Aegrotat certificate in respect of that part, Honours or an Aegrotat certificate have been obtained in, or in respect of, one part of another Tripos Examination.

The regulations apply to persons articled before or after the 9th March, 1928.

The regulations made by the Law Society, and dated the 5th November, 1909, were cancelled.

Remuneration: Conveyancing.—The $33\frac{1}{3}$ per cent. increase in costs chargeable under the Order of 1883 was allowed by the Solicitors' Remuneration Act General Order, 1925, dated July 6th, 1925.

Solicitors Act, 1919, s. 10: Evidence.—Where a solicitor is accused of misappropriating clients' money in India, the Court will not exercise its reserved jurisdiction under sect. 10 of the Solicitors Act, 1919, in order that evidence may be taken on commission in India, the Statutory Committee of the Law Society having no power to take evidence abroad. To do so would be a cumbersome and costly proceeding. The applicants could bring the necessary evidence here before the Law Society. (*Re a Solicitor,* Div. Ct.)

Statutory Committee.—Rules regulating applications to the Committee under the Solicitors Act, 1919, were made on 11th November, 1924. (S. R. & O. 1924, No. 1582/L. 24.)

Struck off rolls or suspended, employment of.—The Solicitors Act, 1928, aims at preventing solicitors struck off the rolls or suspended for misconduct from continuing to prey on the public under cover of employment by another solicitor.

Sect. 1 provides that—(1) No solicitor shall in connection with his practice as a solicitor without the written permission of the Society employ or remunerate any person who to the knowledge of such solicitor is disqualified from practising as a solicitor by reason of the fact that he has been struck off the roll of solicitors

otherwise than at his own request or is suspended from practising as a solicitor.

(2) Any such permission may be given for such period and upon and subject to such terms and conditions as the Society may think fit.

(3) Any solicitor aggrieved by the refusal of the Society to grant any such permission as aforesaid or by any terms and conditions attached by them to the grant thereof may appeal to the Master of the Rolls, who may confirm the refusal or the terms and conditions, as the case may be, or may, in lieu of the Society, grant such permission as aforesaid for such a period and upon and subject to such terms and conditions as he may think fit.

(4) If any solicitor acts in contravention of the provisions of this section or of the terms and conditions upon or subject to which any permission has been given thereunder, he shall be liable to be dealt with in like manner as if he had acted in contravention of the provisions of sect. 32 of the Solicitors Act, 1843, so, however, that, upon any application to strike a solicitor off the roll in respect of any contravention of the provisions of this Act, the powers of the Committee constituted under sect. 12 of the Solicitors Act, 1888, shall, without prejudice to their powers as to making orders as to costs, include power, in lieu of striking the solicitor off the roll, to order him to be suspended from practice for such period as they may think fit.

Sect. 2 provides—(1) Any person who, whilst he is disqualified from practising as a solicitor by reason of the fact that he has been struck off the roll of solicitors otherwise than at his own request or is suspended from practising as a solicitor, seeks or accepts employment by a solicitor in connection with that solicitor's practice without previously informing that solicitor that he is so disqualified as aforesaid shall, on summary conviction, be liable for each offence to a fine not exceeding 10*l*.

(2) Notwithstanding anything in the Summary Jurisdiction Acts, proceedings under this section may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor, but no such proceedings shall be commenced except by or with the consent of the Attorney-General.

Sect. 3 provides that in this Act "the Society" means the Law Society, and anything authorised to be done by the Society under this Act may be done by the Council of the Society on their behalf.

SPIRITS.

Removal.—Sect. 10 of the Finance Act, 1928, gives the Commissioners power to direct that any of the provisions of the Spirits Act, 1880, relating to the removal of spirits from the premises of a distiller, or rectifier of, or dealer in or retailer of spirits, or from a bonded warehouse, shall not apply in the case of any specified persons or classes of persons, or shall apply only subject to any specified modifications.

STAMPS.

Colonial stock transfers.—Sect. 32 of the Finance Act, 1928, has extended sect. 114 of the Stamp Act, 1891 (which provides for the payment of a composition for the stamp duty chargeable on transfers of certain colonial stocks), so as to make it apply to any guaranteed stock issued by the Government of any part of His Majesty's dominions outside the United Kingdom or of any protected or mandated territory.

Company reconstruction or amalgamation.—*See ante, under* COMPANY LAW.

National Debt reduction.—Instruments transferring property for the reduction of the National Debt are exempted from stamp duty by sect. 30 of the Finance Act, 1928.

STATUTE LAW REVISION.

The Statute Law Revision Act, 1927, revises the statutes of the first twenty years of the present century, from chapter 1 of 1 Edw. 7 to chapter 82 of 10 & 11 Geo. 5, by repealing various statutes in whole or in part.

STRAITS SETTLEMENTS.

The Straits Settlements and Johore Territorial Waters (Agreement) Act, 1928, approves an agreement concluded between His

Majesty and the Sultan of the State and Territory of Johore with respect to the boundary between the territorial waters of the Settlement of Singapore and those of the said State and Territory.

STREET COLLECTIONS.

Metropolitan police district.—Regulations about street collections, dated February 22nd, 1928, were made under sect. 1 of the Metropolitan Streets Act, 1903. (S. R. & O. 1928, No. 138, price 1*d.*)

SUGAR.

British Sugar (Subsidy) Act, 1925.—The Manufacture of Sugar Regulations, 1925, were revoked, and fresh regulations published as the Manufacture of Sugar Regulations, 1928. (S. R. & O. 1928, No. 622, price 2*d.*)

Deposit on drawback.—See the Sugar or Glucose (Deposit on Drawback) Regulations, 1928, as to sugar or glucose manufactured in the United Kingdom and deposited on drawback in a warehouse approved for the manufacture of Cavendish or Negrohead tobacco in bond. (S. R. & O. 1928, No. 642, price 1*d.*)

Distillery or yeast factory.—See the Molasses (Spirits and Yeast) Regulations, 1928, as to the delivery and use of molasses at a distillery or a yeast factory. (S. R. & O., 1925, No. 652, price 2*d.*)

Duties, drawbacks and allowances.—Alterations have been made by sect. 4 and the Second Schedule of the Finance Act, 1928.

Food for stock.—See the Molasses (Food for Stock) Regulations, 1928. (S. R. & O. 1926, No. 641, price 1*d.*)

SUMMER TIME.

The Summer Time Act, 1925, made the Act of 1922 permanent. Summer Time begins at 2 o'clock (Greenwich mean time) in the morning of the day next following the third Saturday in April (unless that day is Easter Day, when it begins at 2 a.m. on the morning of the Sunday next before Easter); it ends at 2 a.m. on the Sunday following the first Saturday in October.

SUPERANNUATION FUNDS.

Perpetuity rule.—The Superannuation and other Trust Funds (Validation) Act, 1927, provides that the perpetuity rule is not to apply and is to be deemed never to have applied to the trusts of any fund registered under this Act. (Sect. 1.) The funds which may be registered are specified in sect. 2, which allows to be registered "any fund established under trusts subject to the laws of Great Britain, in connection with an undertaking or combination of undertakings carried on wholly or partly in Great Britain, being a fund of which the main purpose is either—(a) the provision of superannuation allowances on retirement to persons employed in the undertaking or combination of undertakings in connection with which the fund is established; or (b) the provision of pensions during widowhood to the widows of persons who are or have been so employed and of periodical allowances to or in respect of children of such persons; or (c) the assurance of capital sums on the death of persons who have been so employed." But to be registered the rules of the fund must comply with the requirements set out in the Schedule.

Application for registration has to be made to the Registrar of Friendly Societies (sect. 3, sub-sects. (1), (2)), and after registration, when amendments of rules and changes in the names and addresses of trustees are made, the trustees must apply within twenty-one days to amend the register. (Sect. 3, sub-sect. (3).) The Registrar may delete provisions which were, before the Act, inserted in the rules governing the fund merely for the purpose of avoiding the perpetuity rule. (Sect. 4.) The Act also provides for accounts and reports of registered funds (sect. 5), and gives supplementary powers to the registrar and enables him to sue in event of any breach of trust as if he were a beneficiary (sect. 6), and provides penalties for defaults. (Sect. 7.)

The Superannuation and other Trust Funds (Fees) Regulation, 1928, prescribes the following fees to be paid to the registrar under the Act:—For the registration of a fund, 5*l.*; for the registration of an amendment of rules, 1*l.*; for the correction of the register in respect of a change in the address of a fund or in the names or addresses of its trustees, 5*s.* (S. R. & O. 1928, No. 31, price 1*d.*)

SUPREME COURT.

Abandoning claim.—A plaintiff cannot abandon a claim in tort and still pursue a claim for money had and received which depends upon the alleged tort. (*Hardie and Lane, Ltd.* v. *Chilton*, C. A.)

Acquisition of Land, &c. Act, 1919.—Where an award is made in the form of a special case under sect. 6 of the Acquisition of Land (Assessment of Compensation) Act, 1919, the case should be set down in the Crown Paper and not the Special Paper list. The Act enacts that the decision of the High Court shall be final, and it is desirable that the parties should have the decision of three judges rather than of one. (*Hewitt* v. *Essex County Council*, Div. Ct.)

Admiralty: Payment into Court.—Rules of the Supreme Court (No. 1), 1928, annulled Rule 19 of Ord. XXII. and substituted therefor:—"19. All money paid into Court in Admiralty actions proceeding in the Admiralty Registry or in the District Registries of the High Court at Liverpool or Manchester shall be paid to the account of the Accountant-General of the Supreme Court at the Law Courts Branch of the Bank of England or at the Bank of England at Liverpool or Manchester as the case may require."

Admiralty Marshal: Payment into Court.—Rule 15 of Ord. LI. was annulled and the following Rule substituted therefor:—"15. The Marshal shall pay into Court the gross proceeds of any property which has been sold by him, and such proceeds shall, except in the case of sums of less than 20*l.* received by him in cash, be in the form of a draft payable to the Bank of England for the Pay Office account. The Marshal shall bring into Court the account for sale with vouchers in support thereof for taxation by the Admiralty Registrar." (Rules of the Supreme Court (No. 1), 1928, r. 3.)

Affidavit of documents, further.—Ord. XXXI. r. 19A (3), has not altered the practice as to obtaining an order for a further affidavit of documents. If material correspondence is not dis-

closed, an order for a further affidavit of documents will be made. See *British Association of Glass Bottle Manufacturers, Ltd.* v. *Nettlefold,* (1912) 1 K. B. 369; (1912) A. C. 709. (*Reddaway & Co.* v. *Hartley,* Romer, J.)

Amendment of pleadings.—The Court of Appeal reminded practitioners that when pleadings have been amended it is their duty to see that the amendments are embodied on the record. (December, 1927.)

Appeal, correspondence on.—On appeal to the Court of Appeal, when there has been an agreed bundle of correspondence in the Court below, the whole of the documents should be copied for the use of the Court of Appeal, and not only those documents which the solicitors concerned believe to be relevant. (Per Scrutton, L.J.)

Appeals under Ord. LIVd.—Ord. LIVd. deals with appeals to the High Court under the Law of Property Act, 1922, the Law of Property Act, 1925, the Settled Land Act, 1925, and the Land Registration Act, 1925. In pursuance of the power in that behalf conferred by the Order, the Lord Chancellor has, under date 29th October, 1928, nominated Tomlin, J., to be the judge to hear such appeals as the Order refers to a single judge, and Tomlin, J., and Clauson, J., to be the two judges forming a Divisional Court to hear such appeals as the Order refers to a Divisional Court.

Appearance, undertaking to enter.—Solicitors acting upon underwriters' instructions agreed to accept service and to enter appearance in an Admiralty action for the owners of a defendant ship. The Court refused to set aside the service and undertaking on a suggestion that the underwriters were not authorised to give the instructions on the owners' behalf. To do this would have been to destroy the basis of a possible action against the solicitors on their warranty of authority. If an application were made to enforce the undertaking, different considerations might arise, but the undertaking should not be set aside. (*The Gertrude,* Hill, J.)

Assignment of cause or matter.—Form No. 19 in Part I. of Appendix A. is annulled and the following Form stands in lieu thereof:—

"No. 19.

Certificate of Solicitor as to Assignment of Cause or Matter.

[Heading as in Form 1.]

I, A.B., solicitor for the above-named , hereby certify that the writ [*or* summons *or* petition] annexed hereto relates to the administration of or is so closely connected with the trust or winding up to which the cause or matter entitled [*insert title*] and assigned to Mr. Justice relates as to be conveniently dealt with by the same Judge.

(Signed)
Solicitor for

(Countersigned)

[*Signature of Master.*]"

(Rules of the Supreme Court (No. 2), 1927. S. R. & O. 1927, No. 1157/L. 46.)

Assurance Companies Act, 1909.—A notarial certificate is sufficient proof of the execution of a power of attorney in Singapore to obtain payment out of Court of a deposit made under the Assurance Companies Act, 1909. No affidavit is necessary. See Ord. XXXVIII. r. 6, Annual Practice, 1929, p. 688. (*Re Eastern United Assurance Corporation, Ltd.*, Astbury, J.)

Bonds.—Sect. 12 of the Administration of Justice Act, 1928, inserts a new section (219A) in the Supreme Court of Judicature (Consolidation) Act, 1925, with regard to the form and enforcement of bonds which have to be given by any person under or for the purposes of any order of the Court of Appeal or the High Court. It does not affect administration bonds which are legislated for by sect. 167 of the Act of 1925. The bond is to be given in such form and to such officer of the Court as may be prescribed by rules. On breach, the officer may enforce the bond, or the Court may order him to assign it to some one for the purpose of suing on it.

Chancery: Re-arrangement of business.—As from January 1st, 1928, a re-organisation of the Chancery Division was effected by an order of the Lord Chancellor dated 18th November, 1927 (to be cited as the Chancery Division (Re-arrangement of Business) Order, 1927), and by Practice Directions made by the Chancery judges as mentioned below.

The order of the Lord Chancellor divides the judges of the Chancery Division into two groups—one group consisting of Eve, Russell and Romer, JJ., while the other group consists of Astbury, Tomlin and Clauson, JJ. The first group is called Mr. Justice Eve's group, the second Mr. Justice Astbury's group.

The jurisdiction of the High Court in Bankruptcy is to be exercised by or under the direction of the judges in Mr. Justice Astbury's group or one of them. Company winding-up jurisdiction goes to Mr. Justice Eve's group. A direction of the Lord Chancellor attaches to Mr. Justice Eve's group matters commenced or pending in the Liverpool or Manchester District Registries.

In virtue of a direction of all the judges of the Division, the Chief Master deals with the following matters: applications under the Adoption of Children Act, 1926, applications in all causes or matters commenced by a trustee in bankruptcy, applications relating to appeals for extension of patents, removals and appeals for extension of patents, removals and appeals from the County Court under the Guardianship of Infants Act, 1886, and references and appeals from the Registrar under the Land Registration Act, 1925. The remaining chamber work is dealt with according to the distinguishing letter of the cause or matter.

A Practice Note is issued by Eve and Astbury, JJ., which, after giving the effect of the Order and Directions above mentioned, proceeds as follows:—

Witness actions.—The witness list for each group is to be divided into two groups. Part I. is intended to comprise all actions the trial of which cannot reasonably be expected to exceed ten hours. It is hoped to make arrangements under which actions in Part I. will be tried within a comparatively short

period from the entry of trial. Part II. will comprise the remaining actions, including long cases such as have in the past obstructed the speedy trial of the ordinary witness actions.

Actions will be entered in Part I. of the witness list if, on entering the trial, a certificate is produced of counsel who signed the pleadings for the party entering the trial certifying that the trial of the action cannot reasonably be expected to exceed ten hours. In the absence of such a certificate the action will be entered in Part II.

Subject to the above, actions will be transferred from one part of the list to the other only by direction of the judge who is taking actions in the part of the list in which the action stands. Applications for such direction may be made by counsel in Court after intimation to the other side without formal notice of motion.

Distribution of work.—The work within each group will be divided among the judges as follows:—One judge will take the non-witness work for his group, including Chamber summonses (which will usually be taken on Mondays); one judge will take Part I. of the witness list for his group on Tuesday, Wednesday, Thursday and Friday of each week, and on Mondays will take in Eve, J.'s, group, the Companies Winding-up list, and in Astbury, J.'s, group, the Bankruptcy list (including judgment summonses); one judge will sit daily to take Part II. of the witness list for his group. The judges taking the two parts of the witness list in Astbury, J.'s, group will sit as a Divisional Court in Bankruptcy (usually on a Monday) as occasion may require.

Consequential alterations in Ord. V. r. 9 (dd) and Ord. V. r. 9A were made by the Rules of the Supreme Court (No. 2), 1927. (S. R. & O. 1927, No. 1157/L. 46, price 1*d.*)

Commercial Court.—When an award has been made in the form of a special case under sect. 7 of the Arbitration Act, 1889, if the subject-matter thereof is of a commercial nature (*i.e.*, such that an action dealing with it would be properly transferred to the Commercial List), application may be made to transfer such special case to the Commercial List and for the fixing of a day

for its hearing in the Commercial Court, in lieu of its being entered in the Special Paper. (Per Mackinnon, J., (1927) W. N. 258.)

Companies.—Ord. LVc. provides that all proceedings in the High Court commenced under the Companies Acts shall be assigned to the Chancery Division of the Court, and that appeals from orders made under the Acts by a County Court shall be heard by a Divisional Court of the Chancery Division. Rules 7, 8, 10, 11, 12, 14, 16 and 17 of Ord. LIX. apply to such appeals, the words "Office of the Registrar Companies Winding Up" being deemed to be substituted in Rule 11 for the words "Crown Office Department of the Central Office."

Consent order staying action: Breach of terms.—If a consent order is made staying an action on terms set out in a schedule to the order, the remedy, if one of the parties breaks the terms, is to apply for specific performance or an injunction, in the first instance, and not for attachment. (*Dashwood* v. *Dashwood*, Tomlin, J.)

Contempt.—A newspaper published charges of criminal offences against A., incidentally accusing him of being associated with the head of a gang of swindlers. A. issued a writ claiming damages in respect of the last statement only, not *bonâ fide* in the expectation of success, but in order to hamper the newspaper's freedom of comment. The Court refused to treat it as contempt when the newspaper repeated the charges of crime. When the Court is asked to treat published matter as a contempt on the ground that a pending trial will be prejudiced, all the circumstances must be taken into account, and attachment will not be granted where the action is not a genuine proceeding, brought for its avowed purpose. (*R.* v. *Daily Mail*, Div. Ct.)

It is contempt of Court to impute unfairness and lack of impartiality to a judge in performance of his judicial duties. (*R.* v. *Editor of the New Statesman*, Div. Ct.)

Costs: Claim and counterclaim.—Where, in an action involving claim and counterclaim, judgment with costs is given in favour of the defendant on the claim and of the plaintiff on

the counterclaim, the substantial contentions on both sides being common to both claim and counterclaim, costs should not be apportioned. The plaintiff begins the litigation, and the counterclaim only arises as a consequence of it. The claim is to be treated as if it stood by itself, and the counterclaim should only bear the amount by which the costs of the proceedings have been increased by it. The same principle applies where both claim and counterclaim succeed. (*Medway Oil and Storage Co., Ltd.* v. *Continental Contractors, Ltd.*, H. L., dissenting from *Christie* v. *Platt,* (1921) 2 K. B. 17, and following *Wilson* v. *Walters,* (1926) 1 K. B. 511.)

Costs: Incurred before action.— In the taxation of costs the Taxing Master has a discretion under Ord. LXV. r. 27, sub-r. 29, to decide whether costs incurred before action brought were necessary or proper for the attainment of justice, and, if so, to allow them. (*Société Anonyme Pêcheries Ostendaises* v. *Merchants' Marine Insurance Co.*, C. A.)

Costs: Incurred during stay.—Under an order to pay the plaintiffs' taxed costs, costs which were incurred while an order was in force staying proceedings pending the filing of an affidavit by the plaintiffs can be allowed by the Taxing Master if properly incurred for the purpose of the action. The order staying the action is not a stay of activities, and does not prevent proper steps being taken in preparation for trial. (*Société Anonyme Pêcheries Ostendaises* v. *Merchants' Marine Insurance Co.*, C. A.)

Costs: Judgment for £20 or more.—As to conditions under which High Court costs are allowed although the action could have been commenced in the County Court, see sect. 20 of the Administration of Justice Act, 1925, which amended sect. 11 (1) of the County Courts Act, 1919.

Costs: Originating summons.—The Taxing Master has a discretion in each case to allow the costs of a local solicitor who attends at the hearing of an originating summons. (Master's Practice Note No. 43, (1928) W. N. 145.)

Crown side: Cross-examination of deponent.—For something like fifty or sixty years no order has been made on the

Crown side for the cross-examination of a deponent in an affidavit. Such an order is not likely to be made except in very special circumstances. (*R.* v. *Kent Justices,* Lord Hewart, C.J., on the hearing of an application to the Divisional Court in reference to a magistrate's order for payment of rates.)

Death of judge during hearing.—If a judge dies during the hearing of a case and after witnesses have been heard, the judge who resumes the hearing should try the case *de novo*. (*Coleshill* v. *Manchester Corporation,* C. A.)

Debenture-holders' action.—Clause (16) of Rule 2 of Ord. LV. was annulled by the Rules of the Supreme Court (No. 2) 1927 (S. R. & O. 1927, No. 1157/L. 46, price 1*d.*), and the following clause substituted therefor:—

"(16) Applications for orders on the further consideration of debenture-holders' actions or of any cause or matter where the order to be made is for the distribution of an insolvent estate or for the distribution of the estate of an intestate."

[Rule 2 specifies the business to be disposed of in Chancery Chambers. The old clause (16) did not apply to debenture-holders' actions where the assets were more than sufficient for payment of the debenture holders. (Resolution of Judges of Chancery Division, 6th December, 1921.) Orders on further consideration in such actions had to be made in Court unless further consideration in chambers had been specially reserved.]

Discovery.—A receiver and manager appointed by the holders of debentures secured on the undertaking, &c. of the company and having in his possession as receiver all the books of the company of which he was managing director was held not to be entitled to refuse production of documents material to an action involving a claim based on an alleged fraudulent conspiracy between him and the company as co-defendants. He was not allowed to plead that the books and documents were held by him on behalf of the debenture holders and no longer on behalf of the company as managing director. (*Fenton Textile Association, Ltd.* v. *Lodge,* C.A.)

District Registries.—Order in Council of the 7th of May, 1928, established a District Registry of the High Court at Torquay, its district comprising the County Court Districts of Newton Abbot, Torquay and Totnes. Except for then pending matters, Totnes ceased to be a District Registry.

Dormant funds.—A special supplement to the *London Gazette* of 9th March was issued giving particulars of dormant funds in Court which have not been dealt with since 1st September, 1912. Under the Supreme Court Funds Rules, 1927, it is provided that on or before 1st March, 1928, and in every succeeding fifth year, the Accountant-General shall prepare a list or statement of the accounts in the books of the Pay Office to the credit of which there stood on the previous 1st September any funds not less than 50*l.* which had not been dealt with, otherwise than by the continuous investment or placing on deposit of interest, during the previous fifteen years.

This is the only authorised list of dormant or unclaimed funds in Court. Copies can be inspected, without fee, in the Eastern Corridor, ground floor, at the Royal Courts of Justice, or may be purchased from H.M. Stationery Office, Imperial House, Kingsway, W.C.2 (price 2*s.*).

Fees.—The Supreme Court Fees (Amendment) Order, 1928 (S. R. & O. 1928, No. 625/L. 22, price 1*d.*), made various amendments to the existing Order (*e.g.*, reduced the use of adhesive stamps in the Probate Division in favour of impressed stamps) and added the following two new rules:—

"4A. Where a person is proceeding in the Supreme Court under the rules relating to proceedings by and against poor persons, the fees which would otherwise have been payable by him in the first instance in pursuance of this Order shall not be payable.

"5A. The fees specified in the Schedule to this Order shall be remitted where such fees if taken would be payable out of money provided by Parliament:

"Provided that this paragraph shall not apply to cases in which parties may be required to pay costs incurred by the Crown upon any proceedings taken by or against them."

Foreign debtor.—It having been ascertained that a foreign debtor against whom judgment had been obtained was temporarily in this country, but was leaving next day, on application *ex parte* to Tomlin, J., under Ord. XLII. r. 32, for an order for the examination of the debtor as to his means, the learned judge, in granting leave, stated that the order must be served personally on the debtor that day, and it must contain a direction that the debtor be at liberty to apply to discharge the order within seven days, by two days' notice to the creditors, and it was not to be acted upon until the expiration of such period. If no such application was made by the debtor within the seven days, or the application failed, the order was to become absolute. ((1928) W. N. 209.)

Funds in Court for charity.—Sect. 15 of the Administration of Justice Act, 1928, makes provision for the transfer of funds in Court held in trust for charity, or for any ecclesiastical corporation in the Church of England, to the Charity Commissioners or Ecclesiastical Commissioners respectively.

Funds Rules.—The Supreme Court Fund Rules, 1927, replaced, on 1st January, 1928, the Supreme Court Fund Rules, 1915, 1917, 1921 and 1925, the Supreme Court Fund Rules (Enemy Funds in Court), 1920, and the Supreme Court Fund Rules (Poor Persons), 1920, and the various Provisional Rules affecting Supreme Court Funds made in 1926 and 1927. (S. R. & O. 1927, No. 1184/L. 47, price 2*s*. 3*d*.)

Funds Rules: Poor persons.—The Supreme Court Funds (No. 2) Provisional Rules, 1928 (dated 31st July, 1928), which came into operation as Provisional Rules on 1st August, revoke para. (4) of Rule 45 of the Supreme Court Fund Rules, 1927, and substitute the following paragraph therefor:—

"(4) In any case in which money has been lodged under the Rules of the Supreme Court (Poor Persons), 1920, directions in writing signed by the President for the time being of the Law Society or by some other person nominated for that purpose from time to time by the Law Society, and in either case counter-signed by the Secretary of the Law Society, shall be sufficient authority

to the Accountant-General to deal with sums not exceeding 20*l.* in amount."

Further discovery.—To obtain an order for further discovery of particular documents under Ord. XXXI. r. 19A (3), the applicant must displace the oath of the party on the other side that full discovery had been made—at any rate, this should be done to the extent of showing that documents not included in the affidavit of documents existed and were relevant. The document might be of a character making it relevant *ipso facto* in virtue of its existence, or it might be relevant merely by reason of its contents, in which case a *primâ facie* case must be made out that the contents were in fact such as to make the document relevant. It is not enough to show the contents might be of such a nature. (*Astra-National Productions, Ltd.* v. *Neo-Art Productions, Ltd.*, Tomlin, J.)

High Court Divisions.—Sect. 6 of the Administration of Justice Act, 1928, makes it clear that, though sect. 4 of the Supreme Court of Judicature (Consolidation) Act, 1925, splits the High Court for convenience into three Divisions, this does not divide the jurisdiction. The section adds the following sub-section to sect. 4:—

"(4) Without prejudice to the provisions of this Act relating to the distribution of business in the High Court, all jurisdiction vested in the High Court under this Act shall belong to all Divisions alike."

Insurance, disclosure of, in action.—If, in a street accident case, a letter is read by plaintiff's counsel to the jury showing that the defendant is insured, the judge can discharge the jury and try the case afresh. It is a rule that the fact that the defendant is insured must not be disclosed in such cases: if it is, the judge has a discretion to discharge the jury if he thinks fit. (*Grinham* v. *Davies,* Div. Ct.)

Judges, business assigned to.—Sect. 7 of the Administration of Justice Act, 1928, gives the Lord Chancellor power to direct that proceedings, which by any enactment, rule or order are directed to be transacted or disposed of by a special judge or

judges of the High Court, may be transacted and disposed of by one or more judges of the High Court.

Judgments, enforcement of.—Part II. of the Administration of Justice Act, 1920, as to reciprocal enforcement of judgments has been applied to Queensland and Saskatchewan.

Jury, trial by.—Rules 2 and 6 of Ord. XXXVI. were altered by R. S. C. (No. 2), 1925; S. R. & O. 1925, No. 699/L. 10, price 1*d.*, in consequence of sect. 3 of the Administration of Justice Act, 1925, since replaced by Judicature Act, 1925.

Law of Property Acts.—As to applications under these Acts, see the R. S. C. (Law of Property and other Acts), 1925; R. S. C. 1925, No. 935/L. 22, price 2*d.*

Liverpool and Manchester District Registries.—Under directions of the Lord Chancellor, dated 29th October, 1928, all Chancery actions and matters commenced or proceeding in the Liverpool or Manchester District Registry will be dealt with in Court and in chambers by Eve, J., Romer, J., or Maugham, J.

Particulars: Passing-off.—If, in a passing-off action in respect of an unregistered trade mark, the defendant simply denies the plaintiff's allegations as to long and distinctive user by the plaintiff and fraudulent imitation by the defendant, the Court will not order the defendant to give particulars under Ord. XIX. rr. 6 and 7. If, however, the denial involved an allegation, particulars could be ordered. *Maclulich* v. *Maclulich*, (1920) P. 439. (*La Radiotechnique* v. *Weinbaum*, Clauson, J.)

Payment into Court.—Where a defendant is sued by several plaintiffs, each having a separate cause of action, a general payment into Court with a denial of liability under Ord. XXII. is not a good payment. Such a payment can have no effect on costs. (*Smith and Others* v. *Schilling*, C. A., overruling *Benning* v. *Ilford Gas Co.*, (1907) 2 K. B. 290, which had been followed by Swift, J., in the Court below.)

Poor persons: Appeal from County Court.—A poor person who appeals, as such, from the County Court to the High Court, can be ordered to pay costs if the appeal fails. But although

there is jurisdiction to make the order, it will only be made if the appeal is frivolous and vexatious. (*Drummond* v. *Harvey*, Div. Ct.)

Poor persons: Rules.—The Rules of the Supreme Court (Poor Persons), 1928 (S. R. & O. 1928, No. 566/L. 19, price 1*d*.), made sundry amendments to the existing Poor Persons Rules.

Public Trustee, application to displace.—As to the practice on an application to appoint new trustees in place of the Public Trustee under Part IV. of the 1st Sched. to the Law of Property Act, 1925, see 46 L. N. p. 75.

Representative action (*and see* TRADE UNION).—The naming twice over on the record of the same defendants to an action, first in their personal capacity, and secondly in a representative capacity, with the consequent appearance of two sets of counsel at the hearing, is altogether irregular. (*Hardie and Lane, Ltd.* v. *Chilton*, C. A.)

Representative plaintiffs: Claim for damages.—The plaintiffs, suing on behalf of themselves and all other members of the L. C. A. Wrestling Association, claimed damages against the defendants, sued on behalf of themselves and all other members of the N. A. Wrestling Association, who had cancelled the affiliation of the plaintiffs' association, as it was alleged, illegally. It was held that no claim for damages could be made in such circumstances by plaintiffs suing in a representative capacity. (*Wing and Others* v. *Burn and Others*, Clauson, J.)

Rule nisi, application for, in an action.—Ord. LII. r. 2, which provides that "no motion or application for a rule *nisi* shall hereafter be made in any action," applies where a person not a party to the action, in which he has been served with a subpœna *duces tecum*, applies to set the subpœna aside as oppressive and an abuse of process. The rule is not confined to applications by a party to the action. (*R.* v. *Investor's Review, Ltd., Ex parte Wheeler*, Div. Ct.)

Rules, power to make.—Sect. 8 of the Administration of Justice Act, 1928, extends the power of making rules given by sect. 99

of the Judicature Act, 1925. Rules may be made directing that interlocutory applications in connection with appeals to a Divisional Court shall be heard by a single judge, and also regulating the procedure on appeals from any Court or person to the Court of Appeal or High Court, and the procedure in connection with the transfer of proceedings from any inferior Court to the High Court or *vice versâ*.

Sales with approbation of judge.—The attention of the judges was called to the practice thitherto followed under which conditional contracts for sale (other than contracts settled by conveyancing counsel to the Court) had not, as a general rule, been sanctioned by the Court unless the purchaser consented to accept the vendor's title. In future, as a general rule, the purchaser will not be called upon to accept the vendor's title as a condition of the Court's sanction being given to such a contract. ((1928) W. N. 122.)

Service abroad.—On an application for leave to serve a writ out of the jurisdiction, the affidavit in support must contain a statement on oath that the deponent believes that the plaintiff has a good cause of action. Ord. XI. lays down the conditions on which such leave can be given. This statement is one of the essential conditions. (*Vandrey and Others* v. *Nathan,* C. A.)

Service: Agreed manner.—A mortgage of a reversionary interest to a limited company provided that if the mortgagor should be outside the jurisdiction, service of process for the purpose of enforcing the security might be effected by leaving the writ or summons with the mortgagee's secretary or actuary. Service so effected is then good. (*Reversionary Interest Society, Ltd.* v. *Locking,* Tomlin, J.)

Set-off.—If an insurance company, liable under a policy to repair a damaged motor, employs for that purpose the person by whose negligence the damage was caused, the company can set off against his claim for doing repairs the claim which the company by subrogation to the owner of the car has against him for indemnification. (*Page* v. *Scottish Insurance Corporation; Foster* v. *Page,* Salter, J.)

Short Cause List.—When, on the hearing of an Ord. XIV. summons, the Master puts the case in the Short Cause List, the judge at the hearing can allow the claim to be amended by including a claim for an unliquidated amount. A judge trying the Short Cause List has the same powers of amendment as though he were hearing a case in the ordinary list. (*Thomas* v. *Alderton, Ltd.*, C. A.)

Specific performance: Summary judgment.—A new Order (XIVA.) provides for summary judgment for specific performance:—

1. Where the defendant in an action in the Chancery Division has appeared to a writ of summons endorsed with a claim for specific performance of a contract in writing for sale or purchase of property, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts verifying the cause of action, and stating that in his belief there is no defence to the action, apply to the judge for an order for specific performance of the contract and for such consequential accounts, enquiries and directions as to payment of purchase money, interest, damages and costs or otherwise as the case may require. The judge may thereupon, unless the defendant by affidavit by his own *viva voce* evidence or otherwise shall satisfy him that he has a good defence to the action on the merits or disclose such facts as may be deemed sufficient to entitle him to defend, make such order as may be just.

2. The application by the plaintiff under Rule 1 shall be made by summons, returnable not less than four clear days after service, accompanied by a copy of the affidavit and any exhibits referred to therein.

3.—(1) The defendant may show cause against such application by affidavit or the judge may allow the defendant to be examined on oath.

(2) The judge may if he thinks fit order the defendant, or in the case of a corporation any officer thereof, to attend and be examined upon oath or to produce any documents or copies of or extracts therefrom.

4. Leave to defend may be given unconditionally or subject

to such terms as to giving security or time or mode of trial or otherwise as the judge may think fit.

5. Where leave, whether conditional or unconditional, is given, the judge shall have power to give directions limiting the time within which pleadings are to be delivered and as to any interlocutory matter, and may order the action to be set down for trial forthwith or as at such date as he shall think proper.

6.—(1) The costs of and incident to all applications under this Order shall be dealt with by the judge on the hearing of the application, who may order by and to whom and when the same shall be paid or may refer them to the judge at the trial.

(2) If the plaintiff makes an application under this Order where the case is not within the Order or where the plaintiff in the opinion of the judge knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, the application may be dismissed with costs to be paid forthwith by the plaintiff. (S. R. & O. 1927, No. 1157/L. 46, price 1*d*.)

The hearing of an application for summary judgment for specific performance may be treated as the hearing of a summons for directions. (Rules of the Supreme Court (No. 1), 1928, r. 2.)

Stay of action on agreed terms: Practice note.—Mr. Justice Tomlin (in December, 1927) settled the minutes when an action is stayed on agreed terms, which terms are to be scheduled to the order. The minutes are to be as follows:—"And, the plaintiff and the defendant having agreed to the terms set forth in the Schedule hereto, it is ordered that all further proceedings in this action be stayed, except for the purpose of carrying such terms into effect. Liberty to apply as to carrying such terms into effect."

Therapeutic Substances Act: Appeal.—An appeal from any decision given under sub-sect. (4) of sect. 2 of the Therapeutic Substances Act, 1925, is to be made within six months after the date on which notice of the decision is given to the appellant by the licensing authority. The appeal is to a Divisional Court. (R. S. C. Ord. LIX. 19 (2). S. R. & O. 1927, No. 1157/L. 46.)

Third party.—In the absence of special circumstances, an insurance company which has issued a motorist's insurance policy

should not be brought in as a third party at the hearing of an action for damages by the injured party against the motorist. It is a well-established usage at the Bar, enforced by the judges, that in such an action the jury should not be informed that the defendant is insured. (*Gowar* v. *Hales,* Shearman, J.)

Third party: Insurance.—The position of a defendant who seeks to bring in an insurance company as a third party was discussed in *Lothian* v. *Epworth Press,* C. A.

Trial: Application to adjourn.—An appeal lies to the Court of Appeal if an application to a judge to adjourn to a later date the hearing of a case already listed, is dismissed with costs. It was argued the judge in question had made no order, but the order of costs was a "judgment or order" within the meaning of the Judicature Act, 1925, s. 27, sub-s. (1), from which an appeal lay with leave to the Court of Appeal. Such an order will only be reversed when it is clear that injustice must necessarily follow. (*Maxwell* v. *Keun and Others,* C. A.)

SURETY.

If several persons charge their respective properties to secure a person guaranteeing a bank overdraft, and that person subsequently releases one of the securities, the other securities are also discharged. The givers of the securities are in the position of co-sureties, and release of one is a release of all. (*Smith* v. *Wood,* C. A.)

SWEETS.

Excise duty imposed by sect. 6 of the Finance Act, 1927, was raised as from the 25th April, 1928, from 1*s.* to 1*s.* 6*d.* a gallon.

TEA.

Duty.—This remains at 4*d.* a pound till the 1st August, 1929, subject to the Imperial preferential rates allowed by sect. 8 of the Finance Act, 1919. (Finance Act, 1928, s. 1.)

THEATRICAL EMPLOYERS.

Registration.—The Theatrical Employers Registration Act, 1925, requires theatrical employers to be registered, usually with the county or county borough. It has been amended by the Theatrical Employers Registration (Amendment) Act, 1928, which gives power to the registration authority to institute and prosecute any proceedings for any offence under the Act, to apply for orders under sect. 7, and to oppose applications made under sect. 9. The amending Act also authorises the registration authority to refuse, cancel or suspend the registration of a person convicted of an offence involving dishonesty, subject to an appeal to a Court of summary jurisdiction.

TITHE.

London, City of.—Under 37 Hen. 8, c. 12, and the decree made thereunder having statutory effect, tithe is payable at a specified rate in respect of property in the City of London, with an exception in favour of houses in respect of which, before 1545, lesser sums were paid than at the specified rate. The House of Lords held that the onus of proof to show that the exception applies is on the occupier against whom the claim is made, and agreed with Tomlin, J., and C. A.; but differed from the latter in holding that the occupier had not discharged the onus in the case before them. (*Busby* v. *Avgherino*.)

Recovery of tithe rentcharge.—Some alterations were made in the Tithe Rentcharge Recovery Rules, 1891, by the Tithe Rentcharge Recovery Rules, 1926 (S. R. & O. 1926, No. 440/L. 10) and 1927 (S. R. & O. 1927, No. 391/L. 17), price 1*d*. each.

Tithe Act, 1925.—This made important amendments in the law relating to tithe rentcharge. *Inter alia*, it (1) stabilised as from 31st March, 1927, the annual value of tithe rentcharge at 105*l*. per cent. (sect. 1); (2) synchronised the dates of payment of tithe rentcharge—April 1st and October 1st (sect. 2); (3) transferred ecclesiastical tithe rentcharge to Queen Anne's Bounty as from 31st March, 1927 (sects. 3—16). (See 45 L. N. pp. 46, 267.)

TITHE (ADMINISTRATION OF TRUSTS) MEASURE, 1928.

Application.—The Measure regulates the administration of the trusts affecting tithe rentcharge and other rentcharges, rents and payments in lieu of tithe vested in Queen Anne's Bounty under sects. 3 or 14 of the Tithe Act, 1925, in trust for the incumbents of benefices. Subject to the express provisions as to mode of enjoyment of beneficial interests, the Measure does not affect the law affecting tithe rentcharge or the other charges and payments with which it deals. (Sect. 1 (2).) The Measure does not apply unless the tithe rentcharge, &c. is collected through a committee for a collection area under the Tithe Act, 1925, s. 10.

Determination of questions.—An appeal committee is to be set up consisting of such Governors of Queen Anne's Bounty as are appointed. This committee may be required by a beneficiary (without prejudice to his other remedies) to determine any question which may arise in applying this scheme of quarterly payments to his beneficial interest. (Sect. 6.)

General.—Provision is made for the determination or suspension of the system (sect. 10) and its winding-up. (Sect. 11.) No scheme under the Tithe Act, 1925, s. 11, is to be framed until such time as Queen Anne's Bounty deems expedient. (Sect. 12.) Regulations may be made under this Measure by Queen Anne's Bounty (sect. 13), such regulations being proved by producing a copy sealed with the common seal of Queen Anne's Bounty or certified by the Treasurer. (Sect. 14.) The Measure came into operation on 30th September, 1928. (*London Gazette*, August 14th, 1928.)

Payments to be made: Tithe rentcharge.—The scheme of the Measure is that quarterly payments shall be made by Queen Anne's Bounty on the 1st of January, April, July and October in each year to the beneficiaries (*i.e.*, the incumbents and other persons entitled to the beneficial interests in the above-mentioned tithe rentcharge, &c.) The payments in April and July are in respect of tithe rentcharge payable on 1st April in that year, and the payments in October and January in respect of the tithe rentcharge payable on 1st October. (Sect. 2.) Subject

to any necessary apportionment, the amount of any quarterly payment to a beneficiary is to be one-half of such a sum as is estimated by Queen Anne's Bounty to be equal to the half-year's tithe rentcharge in respect of which the payment is made less authorised deductions. (Sect. 3 (1).) Deductions are authorised for principal money and interest due to Queen Anne's Bounty in respect of (1) a mortgage or charge under the Clergy Residences Repair Acts, 1776 and 1780, the Clergy Residences Act, 1826, the Parsonages Acts, 1838 and 1865, and the Loans (Incumbents of Benefices) Amendment Act, 1918 (Schedule), if the mortgage, &c. affects such tithe rentcharge; (2) deductions which, under the Ecclesiastical Dilapidations Measure, 1923, and the Clergy Pensions Measure, 1926, are required or authorised to be made by Queen Anne's Bounty. There is a power to postpone or anticipate the deduction.

Payments to be made: Other beneficial interests.—The scheme is also applied to the other beneficial interests to which the Measure applies, with variations. (Sect. 4.)

TOWN PLANNING.

Act.—The Town Planning Act, 1925, consolidated the existing enactments relating to town planning in England and Wales.

Compensation, determination of questions as to.—See the Town Planning (Determination of Questions as to Compensation) Rules, 1926. (S. R. & O. 1926, No. 439/L. 9, price 1*d*.)

TRADE BOARDS.

Boot and shoe repairing.—A boot and shoe repairer was also, when not engaged in repairs, employed in selling sundries, cleaning up the shop, keeping accounts, &c. He was not while engaged in the latter duties "waiting for work to be given to him to perform" within the meaning of sect. 8 of the Trade Boards Act, 1918. He was, therefore, during the period when he was employed on other duties, not entitled to the minimum wage applicable to boot and shoe repairers. (*France* v. *J. Coombes & Co.*, C. A.)

Dressmaking.—See the Trade Boards (Dressmaking and Women's Light Clothing Trade, England and Wales) (Constitution and Proceedings) Regulations, 1928. (S. R. & O. 1928, price 1*d.*)

Hat, cap and millinery trade.—See the Trade Boards (Hat, Cap and Millinery Trade, England and Wales) (Constitution and Proceedings) Regulations, 1928. (S. R. & O. 1928, No. 678, price 1*d.*)

Hollow-ware.—See Special Order, dated October 26th, 1928 (S. R. & O. 1928, No. 842, price 1*d.*), and Regulations for the Constitution and Proceedings of the Hollow-ware Making Trade Board, dated October 26th, 1928. (S. R. & O. 1928, No. 843, price 2*d.*)

Keg and drum trade.—Regulations were made for the constitution and proceedings of a trade board. (S. R. & O. 1928, No. 844, price 2*d.*)

Milk distributive trade.—A new description of this trade is contained in the Trade Boards (Milk Distributive) Order, 1928. (S. R. & O. 1928, No. 475, price 1*d.*)

For the regulations for the constitution and proceedings of the Trade Board for the Milk Distributive Trade, see S. R. & O. 1928, No. 480, price 1*d.*

Paper box.—See Special Order, dated 26th October, 1928 (S. R. & O. 1928, No. 845, price 1*d.*), and also Amending Regulations. (S. R. & O. 1928, No. 846, price 1*d.*)

Tin box trade.—For the constitution and proceedings of this trade board, see S. R. & O. 1928, No. 847, price 2*d.*

Waste: Cotton waste.—The Minister by Orders amended Regulation 1 of the principal regulations, and set up Trade Boards for the cotton waste branch (S. R. & O. 1927, No. 1209, price 1*d.*), and for the general waste branch (S. R. & O. 1927, No. 1210, price 1*d.*).

Waste materials reclamation.—By special Order, dated 22nd December, 1927, the Minister of Labour altered the description of the above trade. (S. R. & O. 1927, No. 1208, price 1*d.*)

TRADE DISPUTES.

Association of motor dealers.—Sect. 4 (1) of the Trade Disputes Act, 1906, applies to trade unions generally, and includes an association of motor dealers and manufacturers whose object is "the imposing of restrictive conditions on the conduct of any trade or business," which is a statutory object under the Trade Unions Act, 1913, s. 1 (2). Such a union, equally with trade unions of workmen or masters, is entitled to immunity from actions of tort. (*Hardie and Lane, Ltd.* v. *Chilton,* C. A.)

General strike.—The Trade Disputes and Trade Unions Act, 1927, s. 1, declares a strike illegal if (i) it has any object other than, or in addition to, the furtherance of a trade dispute within the trade or industry in which the strikers are engaged, and (ii) it is designed or calculated to coerce the Government, either directly or by inflicting hardship upon the community. A lock-out is illegal in similar circumstances. Where a strike or lock-out is illegal under the section, persons engaged in it lose the protection from criminal or civil liability conferred by the Conspiracy and Protection of Property Act, 1875, s. 3, and the Trade Disputes Act, 1906, s. 3.

Picketing.—The law as to "peaceful picketing" was altered by sect. 3 of the Trade Disputes and Trade Unions Act, 1927.

TRADE MARKS.

Costs.—If the Registrar of Trade Marks makes an order for payment of costs which is not obeyed, application should be made to the High Court to have the order made a rule of Court. ((1928) W. N. 168.)

Rectification of register.—The Court will rectify the register of trade marks by removing a trade mark which has been on the register for seven years at the hearing but not at the launching of the motion for rectification. The seven years had not expired when the motion first came before the Court, and the delay which had occurred as to trial was due to no fault of the parties, but to the normal consequence of the procedure in trade mark cases. *Actus curiæ neminem gravabit,* and the order for rectification

could be made, nor need it be ante-dated, as Clauson, J., had directed. (*Keystone Knitting Mills Trade Mark*, C. A.)

Registration.—A trade mark cannot properly be registered if the intention is to use it through the medium of a limited company in the event of the secret process to which the mark is to be applied being perfected and circumstances making it desirable. There is no "definite and present intention" of user as required by *Re Batt's Trade Marks*, (1898) 2 Ch. 432, 439, 440. Moreover, the intention required by sect. 37 of the Trade Marks Act, 1905, is an intention to use by the proprietor registering. (*Re Ducker's Trade Mark*, C. A.)

TRADE UNIONS.

General strike.—By sect. 2 of the Trade Disputes and Trade Unions Act, 1927, no member of a trade union is to be expelled from his union or to suffer any penalty for refusing to join in a strike or lock-out which is illegal under sect. 1 of the Act. (*See* TRADE DISPUTES, *ante*.)

Political funds.—A member of a trade union now is only liable to contribute to the union's political fund if he contracts *in*; formerly he had to contract *out*. (Trade Disputes and Trade Unions Act, 1927, s. 4.)

Ultra vires.—The national executive of a trade union which was in financial difficulties passed resolutions reducing for the time being the rates of superannuation allowance and funeral benefits as authorised by the rules. The national executive had no power to alter the rules in respect of these matters. The Court held that a member of the union could not obtain an order that these resolutions were *ultra vires* and an injunction to prevent them being acted on. The resolutions were not alterations of the rules, but merely a matter of administration, meeting circumstances in which the union was unable to make the payments provided for by rules. The union was in arrear with its unemployment contributions, and unless its finances were re-organised unemployment payments to members would have ceased to be possible and the union would have come to an end. In any case relief to the plaintiff was barred by sect. 4 of the Trade Union Act, 1871,

since this forbade his recovering benefits by action, and that being so an injunction could not be granted. *McLuskey* v. *Cole*, (1922) 1 Ch. 7. (*Cox* v. *National Union of Foundry Workers of Great Britain and Ireland*, Astbury, J.)

Unregistered.—It is not permissible under Ord. XVI. r. 9, to pick out three members of an association which is an unregistered trade union and sue them in an action of tort as representing the other members of the association. (*Hardie and Lane* v. *Chilton*, C. A.)

TRESPASS.

Continuing wrong.—If in the course of demolition operations debris is deposited on adjoining property by the owner of the property being demolished, a lessee of the adjoining property, who only acquires his interest subsequently, can sue for the damage he suffers owing to the presence of the debris. The contractors are not liable for negligence, for there is no duty to the lessee, but there is a continuing trespass for which he can sue. (*Konskier* v. *B. Goodman, Ltd.*, C. A.)

TRUST: TRUSTEES.

Act.—The Trustee Act, 1925, consolidated certain enactments relating to trustees. (See "Law Notes" Guide to the New Property Statutes, 2nd edition, and Supplement, January, 1929.

Breach of trust.—Sect. 30 (1) of the Trustee Act, 1925, which indemnifies a trustee from liability "for any other loss, unless the same happens through his own wilful default," does not apply to a trustee who has paid away part of the trust fund to the wrong person. (*Re Windsor Steam Coal Co.* (1901), *Ltd.*, C. A.)

Costs of leading counsel.—There is no rule against allowing the costs of leading counsel retained for trustees. The taxing master will always exercise a discretion in allowing or disallowing such costs. (*Re Tuck*, Clauson, J.)

Protective trusts.—Under a special power of appointment among issue contained in an ante-nuptial settlement, property cannot be appointed to a son for his life on protective trusts, with remainder to the son's daughter. The protective trusts in sect. 33 of the Trustee Act, 1925, would give the trustees power to apply the income for the benefit of the son's wife, who is not an object of the power. (But the appointment would be a good appointment to the son for life with remainder to his daughter, the protective trusts being eliminated.) (*Re Boulton's Settlement Trust, Stewart* v. *Boulton*, Eve, J.)

Repairs.—If land is held on trust for sale, the expense of repairs need not necessarily be paid out of income. In *Re Gray* (*infra*), the person entitled to the income asked the Court to say that the trustees ought not to pay for repairs out of income. Clauson, J., held that the trustees had power to pay the expenses out of income; they had a discretion, and if they chose to pay them out of income it was not for the Court to interfere. But in this case the trustees came to the Court and said they were not disposed to exercise their discretion, and asked the Court how they ought to pay for the repairs. The Court was as free now as before 1926 to determine the question, and must adhere to the principles laid down in such cases as *Re Hotchkys* (1886), 32 Ch. D. 408. Held: the repairs ought to be paid for out of *corpus*. (*Re Robins, Holland* v. *Gillam*, Tomlin, J., distinguishing *Re Gray*, (1927) 1 Ch. 242.)

Trust corporation.—As to what corporations can act as "trust corporations" under the Law of Property and other Acts of 1925, see the Public Trustee (Custodian Trustee) Rules, 1926 (S. R. & O. 1926, No. 1423/L. 37, price 1*d*.), and Law of Property (Amendment) Act, 1926, s. 3.

Undue influence.—Where a gift *inter vivos* is made to a person standing in a fiduciary position to the donor, the presumption of undue influence is not necessarily rebutted by proof that the donor had independent advice. It must be shown that the advice was given with a knowledge of all relevant circumstances, and was such as a competent and honest adviser would

give if acting solely in the interest of the donor. It was also held that independent legal advice is not the only way in which the presumption of undue influence may be rebutted. (*Inche Norah* v. *Shaik Allie,* Jud. Com.)

UNEMPLOYMENT INSURANCE.

Arrears.—Where an employer has been convicted under the Unemployment Act, 1920, s. 22, of failing to pay contributions under the Act and has been ordered to pay arrears of contributions for the year preceding the date of the information (as the section authorises to be done), this does not bar civil proceedings for earlier contributions not paid. (*Attorney-General* v. *Paine,* C. A.)

Banking.—See the Banking Industry Special Scheme (Amendment) Special Order, 1928. (S. R. & O. 1928, No. 310, price 3*d.*)

Courts of Referees.—See Unemployment Insurance (Courts of Referees) Regulations, 1928. (S. R. & O. 1928, No. 309, price 1*d.*)

Domestic servant.—A domestic servant employed in a hostel connected with an educational establishment is not insurable under the Unemployment Insurance Act, 1920, if the hostel is so intimately connected with an educational establishment as to be practically part and parcel thereof. (*Re Mackay; Re Rowley and Another; Re Barry and Another,* Roche, J.)

Domestic service.—A bath attendant and a library attendant employed by a local authority are employed in domestic service for the purposes of the Unemployment Insurance Act, 1920. (*Re Lee, Birmingham Corporation* v. *Minister of Labour,* Roche, J.)

Exempt persons.—See Unemployment Insurance (Exempt Persons) Regulations, 1928. (S. R. & O. 1928, No. 307, price 2*d.*)

Incapacity.—See the Periods of Incapacity Regulations, 1928. (S. R. & O. 1928, No. 324, price 1*d.*)

Insurance industry.—See the Unemployment Insurance (Insurance Industry Special Scheme); (Variation and Amendment); Special Orders, 1928. (S. R. & O. 1928, No. 311 and No. 467, price 1*d.* each.)

Insurance year.—See the Insurance Year Regulations, 1928. (S. R. & O. 1928, No. 375, price 1*d.*)

Persons over 65.—The Unemployment Insurance (Collection of Contributions for Persons over 65) Regulations, 1928, prescribe special forms, and apply the principal regulations with adaptations to the collection of these contributions. Notice especially Regulation 8:—Where an employer has in his possession or under his control any unemployment book issued under the principal regulations in respect of a person over 65 he shall as soon as may be return it duly stamped to that person, and that person shall forthwith deliver it to the Minister of Health or otherwise as the Minister may direct. (S. R. & O. 1928, No. 14, price 4*d.*)

Poor relief.—A board of guardians arranged with a local authority to employ on work of public utility certain men in receipt of poor relief, the guardians paying the relief over the period of employment to the local authority. Men nominated for this purpose by the guardians were so employed, each man working alternate weeks, running from Thursday to Wednesday inclusive. A man so employed was not insurable under the Unemployment Insurance Act, 1920, as amended by the Unemployment Insurance Act, 1927. The man was not working the normal number of hours in each calendar week as was necessary to bring the case within the Acts. (*Re Leeds Corporation and Chadwick*, Roche, J.)

Review of claims.—Regulations were published as to this: see S. R. & O. 1928, No. 323, price 1*d.*

Travelling expenses.—See Unemployment Insurance (Payment of Travelling Expenses) Regulations, 1928. (S. R. & O. 1928, price 1*d.*)

Umpire's decisions.—Index to Umpire's Decisions given during the year 1927. (U. I. 440; Index 1927. Stationery Office, 37—9999—00—00, price 6*d.*)

UNEMPLOYMENT INSURANCE ACT, 1927.

Considerable amendments in the earlier Acts were made by this Act. Many amendments, both of policy and detail, were made, including:—

Benefit.—An insured contributor who is unemployed is, if the statutory conditions are fulfilled and he is not disqualified, entitled to benefit at a uniform prescribed weekly rate (sects. 1 and 4), "extended benefit" being abolished. The rates of benefit are:—For men and women, 17*s.* and 15*s.* respectively; if aged 20, 14*s.* and 12*s.*; aged 19, 12*s.* and 10*s.*; aged 18, 10*s.* and 8*s.*; aged 16—18, 6*s.* and 5*s.* (3rd Sched.) Young men and young women (*i.e.*, persons under 21) who receive an increase of benefits for dependants are entitled to benefit at 17*s.* and 15*s.* (Sect. 4.) A further 7*s.* (not 5*s.* as previously) is payable when a female person resides with the insured person and has care of dependent children. (Sect. 4 (2) (a) (i) and (ii).)

Claims.—All claims are decided by the same statutory machinery:—In the first place an insurance officer, with a right of appeal in all cases to a Court of Referees, and a further right of appeal in certain cases to the Umpire, whose decision is final.

Conditions for receipt of benefit.—(a) From 19th April, 1928, for a transitional period varying from one to two years in individual cases, claimants will be required to prove payment of eight contributions in the last two years, or thirty contributions at any time. (Sect. 14.) After that transitional period, claimants must prove the payment of thirty contributions during the two years preceding the claim for benefit. (Sect. 5 (1) and (2).) Special provisions apply to ex-Service disabled men, in whose case the requirement will be ten contributions instead of thirty. (Sect. 5 (5).)

(b) The claimant must be genuinely seeking work. A claimant for benefit is allowed to stand out for a reasonable interval for employment in his usual occupation, but thereafter employment of a kind other than his usual employment may be regarded as suitable. There are also some modifications of the disqualification for benefit based on the loss of employment owing to a trade

dispute. (Sect. 6.) The maximum period of employment after which a fresh waiting period is not required is extended from six weeks to ten weeks. (Sect. 7.)

Contribution, rates of.—New rates of contribution for young men and young women are set out in the first two schedules. The employed persons contribute 6*d.* and 5*d.* a week for young men and young women respectively, and employers 7*d.* and 6*d.*

VACCINATION.

The right of search in the vaccination register given to members of the public by the Vaccination Act, 1867, s. 24, and the Vaccination Act, 1871, s. 6, still obtains, and has not been affected by subsequent legislation. (*R.* v. *Southwark Vaccination Officer, Ex parte Governors of Peabody Donation Fund*, Div. Ct.)

VAULT.

The grantee of a vault in a cemetery under the Cemeteries Clauses Act, 1847, s. 42, has not the freehold, but an interest in the nature of an easement, with such property in the materials of the vault as would entitle her to damages for removal or defacement. The grantee has no right to visit and open the vault except for the purpose of interment, and may not perform private rites or ceremonies therein. (*Hoskyns-Abrahall* v. *Paignton Urban District Council*, Eve, J., and C. A.)

VENDOR AND PURCHASER.

Auctioneer's signature.—Property was knocked down to a purchaser, who then raised a protest of no substance on a point on the conditions of sale, refused to sign the contract when requested to do by the auctioneer's clerk, and left the sale room. The auctioneer returned to his office, some three miles distant, and having waited for the purchaser to call or telephone, about two hours after the sale signed the contract. Held: this was sufficient signature to satisfy the Law of Property Act, 1925, s. 40. (*Chaney* v. *Maclow*, Maugham, J., and C. A.)

Compulsory purchase: Interest.—When land is expropriated under statutory power, whether for private gain or for the good

of the general public, the owner is entitled to interest upon the principal sum awarded from the date when possession is taken, unless the statute shows a clear contrary intention. (*Inglewood Pulp and Paper Co., Ltd.* v. *New Brunswick Electric Power Commission,* Jud. Com.)

Conditional contract: Condition not fulfilled before date fixed for completion.—A receiver in a debenture holder's action entered into a contract for sale conditional on the Court's sanction being obtained. A date was fixed for completion. The Court's sanction had not been obtained at that date. It was held by Maugham, J., that the purchaser could rescind the contract and recover his deposit. (*Re Sandwall Park Colliery Co., Field* v. *The Company.*)

Conditions, General, of Law Society.—The new edition of these Conditions is on sale.

Application by London solicitors must be made to the Solicitors' Law Stationery Society, Ltd., of 22, Chancery Lane, W.C.2, and their branches in London as agents for the Law Society. Applications for prints by provincial solicitors must be made to one or other of the provincial law societies.

A memorandum has been prepared to indicate and explain the alterations and additions which have been made in the new edition, and is given in the *Law Society Gazette,* April, 1928 (Vol. XXV. p. 118).

Conditions: Misstatement.—If the conditions of sale exclude compensation for errors or misstatements in the particulars, the purchaser cannot obtain damages for breach of contract if the particulars are misleading. (*Curtis* v. *French,* Eve, J. But as it was a hard case, he made no order as to costs.)

Conditions: Statutory form.—Sect. 46 of the Law of Property Act, 1925, allowed the Lord Chancellor to prescribe conditions to apply to sales of land by correspondence. A form of conditions—called the Statutory Form of Conditions of Sale, 1925—has been published. (S. R. & O. 1925, No. 779/L. 14, price 1*d.*)

Counsel's certificate as to title.—The Bar Council expressed the opinion on the 29th March, 1926, that counsel could not

properly give such a certificate as was contemplated by No. 25 (5) of the General Conditions of Sale issued by the Law Society. (45 L. N. p. 137.)

Option to purchase.—A person who had agreed to buy land from executors subject to a tenancy from year to year vested in X., found that one of the executors had written a letter to X. saying: "We give you the option of entering into immediate occupation, and we agree not to advance the agreed rent so long as you remain the tenant and regularly pay the rent. . . . We also give to you the option of taking the said house and premises on any lease suitable to you at the same rent, or the option of purchasing the said house and premises at a price mutually to be agreed on. You can rest assured if you remain tenant twenty years we shall not interfere with the rent, although we are sacrificing 20*l.* a year." It was held that the letter formed no objection to the title. The option of purchase was of no value at all, and in any case was quite beyond the powers of executors to grant. The tenancy claimed by X., which amounted to a tenancy for life at a fixed rent, was one wholly beyond the powers of executors to grant. (*Johnson* v. *Clarke*, Maugham, J.)

Personal representative, sale by.—If land is settled on A. for life and then to trustees on trust for sale, and on A.'s death a general probate is granted to his executor, the executor can sell the settled land. As from the date of the grant of probate, wherever the legal estate may have been as between A.'s death and the grant, the legal estate vested in the executor, and he could, while the probate remained unrevoked, convey the legal estate to a purchaser. (Law of Property Act, 1925, s. 204 (1).) The purchaser would be protected even if the grant was afterwards revoked. (Administration of Estates Act, 1925, s. 37.) (*Re Bridgett and Hayes' Contract*, Romer, J.)

Rates: Special expenses.—A rate levied by the overseers on a contributory place to meet "special expenses" incurred by a rural authority under the Public Health Act, 1875, ss. 222 and 230, in respect of sewage, is not a charge upon land in the contributory place but a mere outgoing for which the occupier is personally liable. Therefore, when land is sold subject to all out-

goings, the vendor is not liable to discharge a special expenses rate. (*Calder's Yeast Co., Ltd.* v. *Stockdale*, C. A.)

Title: Personal representatives selling "as trustees for sale."—If A. and B., who are in fact personal representatives, contract to sell "as trustees for sale," they can force the title on the purchaser. The words "as trustees for sale" do not warrant that title shall be made under a trust for sale; A. and B. have agreed to make a good title, with an indication of the way in which they propose to do it. (*Re Spencer and Hauser's Contract*, Tomlin, J.)

Time of the essence or not?—The plaintiff agreed on the 29th October to buy from the defendant a lease of certain premises to be used, as the vendor knew, for carrying on a garage. Possession was to be given "on or about the 6th December," and the vendor agreed to do certain work before completion. The plaintiff paid a deposit of 100*l.* The time for giving possession was subsequently extended to the 15th December. By the 10th December it became obvious that the vendor could not finish the work he had agreed to do by the 15th December, and the purchaser rescinded the contract and sued to recover the 100*l.* Held: time was of the essence of the contract, and the money could be recovered. (*Bernard* v. *Williams*, Div. Ct.)

WAR LOAN.

National War Bonds (Series 3).—The War Loan (Exchange of Securities) Rules, 1928, contain the rules for the exchange of these into 5*l.* per cent. Treasury Bonds, 1933—35. They also provide that power to invest in the old security shall extend to the new, and that references in instruments executed before the date of the rules (10th January, 1928) may be construed as references to the new securities if *exchanged therefor*. (S. R. & O. 1928, No. 372, price 1*d.*)

Treasury Bonds, £5 per cent.—The War Loan (Exchange of Securities) Rules (No. 2), 1928 (S. R. & O. 1928, No. 572, price 1*d.*), prescribe rules for the conversion of 5*l.* per cent.

Treasury Bonds, 1933—35 (old securities) into 4*l.* per cent. Consolidated Loan (new securities). Notice Rules 3 and 4:—

3. A power or direction, whether subject or not to any restrictions or conditions, to invest in any old securities shall extend to authorise an investment, subject to the same conditions and restrictions (if any) in new securities.

4. In any Act passed or instrument executed before the date of these rules, references to any old securities may, if the securities are exchanged for new securities, be construed as references to any new securities received in exchange therefor, and in the case of any testamentary instrument executed before the date of these rules any disposition which would have operated as a specific bequest of any such securities shall, if the same are so exchanged, be construed as a specific bequest of the amount of new securities for which the same were exchanged.

WATERWORKS.

The effect of the Waterworks Clauses Act, 1847, s. 27, was considered in *Graigola Merthyr Co., Ltd.* v. *Mayor of Swansea*, Tomlin, J.

WEIGHTS AND MEASURES.

Sect. 12 (5) of the Sale of Food (Weights and Measures) Act, 1926 (which enables employers charged with an offence "against this Act" to adopt a procedure which will have the effect of substituting the actual offender as defendant), applies where the charge is made under the Weights and Measures Act, 1878, since the later Act provides that it is to be read as one with the Weights and Measures Acts, 1878 to 1904. (*Harl* v. *Hudson Bros., Ltd.*, Div. Ct.)

WILL.

Capital or income?—A testator gave the residue of his estate to trustees on trust for his widow for life, with remainders over. The will contained a clause that the whole of the net income arising from the estate in its actual state of investment for the time being should be treated as annual income, no part being

liable to be retained as capital. During the widow's life certain cash payments were made in respect of the testator's shares in the Anchor Fishing Steam Co. These payments were made out of money arising from the sale of three of the company's steam trawlers, the capital account being kept intact and the surplus distributed. In making the payment the company stated that the payment was not a dividend or bonus, but a capital distribution, so that it was not liable to income tax or super-tax. Eve, J., held that, though the company could have capitalised the surplus funds by the issue of bonus shares, that was the only way in which the funds could have been capitalised (*Bouch* v. *Sproule* (1887), 12 App. Cas. 385), and as this had not been done, the money must be treated as income. (*Re Bates, Mountain* v. *Bates.*)

Construction: "All my farms in B. parish."—A testator devised "all my farms in B. parish" to X., and by a codicil devised a farm in B. parish, purchased after the date of the will, to Y. for life, with remainder to Z. in tail, and the latter devise partially failed by Z. dying without issue and without barring the entail. It was held that X. was entitled to this farm on the death of Y. There was a clear devise in the will of all the testator's farms in B. parish, and it operated so far as the codicil was ineffective to alter it. (*Re Davies, Thomas* v. *Thomas-Davies,* Astbury, J., applying *Ward* v. *Van der Loeff*, (1924) A. C. 653.)

Construction: "All my money."—A testator left "all my money" to A., and appointed no executor. He left cash in the house, money on current account at his bank, money secured by mortgage with arrears of interest, War Loan, stocks and shares, the right under a settlement to receive a sum of money secured by mortgage, furniture and freehold cottages which were subject to a mortgage. Lord Merrivale, P., held that, looking at the words of the will, the state of the assets, and the other relevant circumstances, there was no indication that the testator intended to include by the word "money" the furniture or the equity of redemption in the cottages. Therefore, A. was not entitled to a grant of administration, which must be made to the persons entitled under an intestacy. (*In the Estate of Gates.* Compromised on appeal on terms which required any questions of construction to be determined *de novo* in the Chancery Division.)

In another case (*Re Emerson, Morrill* v. *Nutty*, Tomlin, J.), a testatrix was, at her death, possessed of a freehold house, freehold ground rents, household goods, stocks and shares, and a small sum of cash in the house. By her will, she bequeathed certain legacies and gave the house and all her furniture, household linen, jewellery and personal belongings not otherwise disposed of to her adopted niece. By a codicil, she bequeathed to the niece "the residue of money at the time of death." Held: the word "money" meant all the personalty that was left after discharging debts, funeral and testamentary expenses and legacies; the niece, therefore, took the stocks and shares, but not the freehold ground rents. A gift of "money," which would not before 1926 have included real estate, does not now include it, although the Administration of Estates Act, 1925, has constituted the real and personal estate one fund for payment of debts and legacies.

Construction: "All my rights in connection with the play D."—A bequest in the above words was held to include the benefit of a contract for the sale of film rights entered into after the will was made and not completed by the date of death. As no contrary intention appeared the will was to be construed as if executed immediately before the testator's death. (*Re Bancroft, Bancroft* v. *Bancroft*, Russell, J.)

Construction: Devise—Contract of sale.—A testator devised all his freehold property at D. to his sons, A. and H. He was entitled at his death to an undivided moiety in thirty-seven acres of freehold land at D., but before the date of the will he had agreed to sell ten acres of this land. The sale was not completed until after his death. It was held that A. and H. were entitled to the proceeds. It was argued that as the testator, after the contract of sale, had a moiety of twenty-seven acres left it was not a case where he must have intended the devise to operate over the proceeds of sale. But the rule as laid down in *Weeding* v. *Weeding* (1861), 1 J. & H. 424, and *Re Pyle*, (1895) 1 Ch. 724, 727, is that a specific devise made after an option to purchase the land has been given shows the testator's intention to pass to the devisee all the testator's interest in the land whatever it may be; and this rule has been applied where the option has been exercised

as to part of the property. *Drant* v. *Vause* (1842), 1 Y. & C. C. C. 580. (*Re Calow, Calow* v. *Calow*, Eve, J.)

Construction: Devise to personal representatives of beneficiary.—When a testator directed the trustees of his will to divide the income of his residuary estate equally between his seven children during their respective lives, and after the death of any child, whether in his lifetime or after his death, to hold one-seventh of the capital on trust for the "personal representatives" of that child, the children were absolutely entitled to their shares. "Personal representatives" primarily means executors or administrators, not next of kin, and the will showed nothing to displace this primary meaning. (*Re Brooks, Public Trustee* v. *White*, C. A., overruling *Bridge* v. *Abbott*, 3 Bro. C. C. 224, and *Cotton* v. *Cotton*, 2 Beav. 67.)

Construction: Lassence v. Tierney.—A testator gave his residuary estate to trustees upon trust to divide the same into seven parts and to pay or transfer two seventh parts to his son, Matthew, provided always that the share given to Matthew should not vest absolutely in him, but should be retained by the trustees and held upon certain trusts (which failed), and in the event of Matthew's death without leaving any children him surviving, the said share should sink into the residuary estate thereinafter mentioned. Matthew died a bachelor after the testator. It was held, distinguishing *Re Payne*, (1927) 2 Ch. 1, that the rule in *Lassence* v. *Tierney* applied, there being an absolute gift qualified by the imposition of trusts all of which had failed; Matthew's share therefore passed to his personal representatives, and the gift over to the residuary estate was invalid. (*Re Marshall, Graham* v. *Marshall*, Eve, J.)

Construction: "My present lease."—A testator by a will made in 1921 gave "my present lease" to his daughter. The lease expired in 1924 and he took a new lease. In 1926 the testator made a codicil which confirmed his will. It was held that the daughter was entitled to the new lease. The testator, by the confirmatory clause had brought down the date of the will to the date of the codicil. No contrary intention within sect. 24

of the Wills Act, 1837, was shown. (*Re Reeves, Reeves* v. *Pawson*, Russell, J.)

Construction: Next of kin.—A testator, who died in 1875, gave a share of his personal estate on trust for A. for life, and after his death for the persons who under the Statutes of Distribution would on A.'s decease have been entitled as his next of kin had he then died intestate. A. died in 1927. The persons entitled were to be ascertained by reference to the old Statutes of Distribution, not by reference to the new law of intestacy. (Eve, J., applying sect. 50 (2) of the Administration of Estates Act, 1925. *Re Sutcliffe, Sutcliffe* v. *Robertshaw*.)

Construction: Railway amalgamation.—A testator made his will on 9th March, 1922, and made a bequest to A. of "all my stocks and shares in the Great Eastern Railway." In November, 1922, he had 3,000*l*. ordinary stock of the Great Eastern Railway. In 1923 he received for this 1,050*l*. ordinary stock and 1,350*l*. deferred ordinary in the London and North Eastern Railway on the amalgamation which then took place. He then bought 3,800*l*. deferred ordinary stock in the London and North Eastern Railway, and subsequently confirmed his will by a codicil. It was held that A. was entitled to the 1,050*l*. ordinary and the 1,350*l*. deferred ordinary stock by virtue of clause 10 of the amalgamation scheme, but not to the 3,800*l*. deferred ordinary stock. (*Re Anderson, Public Trustee* v. *Bielby*, Russell, J.)

Construction: Uncertainty of gift.—A testator gave to his widow such articles of furniture as she should within two calendar months select. She died within the two months without selecting any articles. Her executors could not make the selection within the two months. She had to make her selection in person. Coke on Littleton, 145a; Sheppard's Touchstone, Vol. II. p. 251. (*Re Madge, Pride* v. *Bellamy*, Eve, J.)

Legacy: Interest from death.—See *Re Stokes, Bowen* v. *Davidson*, Tomlin, J., applying *Re Moody*, (1895) 1 Ch. 101, and Article in "Law Notes," November, 1928.

Lost document.—No rule of common law as to evidence is contravened by the admission of secondary evidence of a lost

document. If a testamentary paper no longer existing is shown to have been duly executed, and its contents shown to have included a clause revoking previous papers, those papers are no longer testamentary from the moment of execution. (*Barkwell* v. *Barkwell,* Lord Merrivale, P.)

Mutual wills.—The mere fact that two wills have been made simultaneously by husband and wife in identical terms does not necessarily imply an agreement that after the death of one spouse the other will not revoke his or her will. There must be evidence of such an agreement apart from the mere making of the wills. (*Gray* v. *Perpetual Trustee Co., Ltd.*, P. C., following *Re Oldham,* (1925) Ch. 75.)

Oral declarations of testator.—Declarations of a testator made after execution of the will are not admissible as to the fact of execution itself as tending to contravene the statutory requirements as to execution; but they are admissible to prove the contents of a paper otherwise shown to have been properly executed and no longer in existence. *Quære* whether declarations made by a testator before execution of an intended will as to the contents thereof are admissible. (*Barkwell* v. *Barkwell,* Lord Merrivale, P.)

Secret trusts.—A testator gave a legacy to five trustees, stating in the will that they were to hold it on the trusts indicated to them. The details of the trusts were communicated to the trustees and accepted before the testator's death, and one of the trustees drew up a memorandum recording them on the day the will was executed. The Court of Appeal held that parol evidence was admissible to prove what the trusts were. That Court was concluded by the decision in *Re Huxtable,* (1902) 1 Ch. 214, adopting *Re Fleetwood* (1880), 15 Ch. D. 594, though a strong case might be put forward in the House of Lords on the basis of the Wills Act and the speeches in *McCormick* v. *Grogan,* L. R. H. L. 82 (Ir.). Art. 47 L. N. 116. (*Re Blackwell, Blackwell* v. *Blackwell,* C. A.)

WINE.

British wine.—See regulations, dated January 31st, 1928, made under sect. 10 of the Finance Act, 1911, relating to the

mixture of British wine with foreign wine or with spirits, and the sale of British wine containing foreign wine. (S. R. & O. 1928, No. 88, price 1*d*.)

WIRELESS TELEGRAPHY.

"**Transmit**" in sects. 1 (7) and 2 of the Wireless Telegraphy Act, 1904, includes the reception as well as the sending of messages. (Wireless Telegraphy (Explanation) Act, 1925.) This Act was passed to remove doubts as to the power of the Postmaster-General to demand a fee from persons using a wireless receiver.

WORKMEN'S COMPENSATION.

Acts.—The Acts are now consolidated in the Workmen's Compensation Act, 1925. A slight amendment was made in sect. 11 (2), which provides for the review of an award in favour of an infant workman by the Workmen's Compensation Act, 1926. (See, on the amendment, *Edward Curran & Co., Ltd.* v. *Kays*, C. A.) There is also the Workmen's Compensation (Transfer of Funds) Act, 1927, which provides for the making of rules to enable sums awarded under the workmen's compensation law of one part of the British Empire to be transferred to and administered by a competent authority in some other part of the Empire where the beneficiaries are. Apparently no rules have yet been made.

"**Children's Allowance**": **Workmen's Compensation Act, 1925, s. 8.**—A workman left (a) a widow who was totally dependent, (b) a step-daughter aged sixteen, who was partially dependent, and (c) a step-son and a daughter, both fifteen years of age, who were both totally dependent. The amount of the children's allowance was governed by clause (i), and not clause (ii), of sect. 8 (3). The antithesis in clauses (i) and (ii) was between dependency and partial dependency, and therefore the fact that the widow was wholly dependent excluded the application of clause (ii). (*Green* v. *Premier Glynrhonwy Slate Co., Ltd.*, C. A.)

Course of employment: Assault.—A workman employed by upholsterers was engaged in carrying furniture to a railway van

when an altercation arose with the carter in charge of the van in the course of which the workman sustained severe injuries. A County Court judge refused compensation on the ground that the assault, while an accident in the course of the employment, did not arise out of the employment, which involved no special risk of such an assault. This decision was supported on appeal, because the decision of the County Court judge to the effect that no special risk of assault was involved in the employment was a finding of fact, and the award could, therefore, not be interfered with. (*Lee* v. *S. & J. Breckman, Ltd.*, C. A.)

Course of employment: Commercial traveller.—A commercial traveller, employed on commission, defraying his own travelling expenses and using a motor cycle for the purpose of his business, was, while returning home on his motor cycle from business visits, injured by a falling tree. This was an accident arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act, 1925. The cause of the tree falling was immaterial; whatever the cause, the employment brought the traveller within the zone of special danger of such an event happening. (*Lawrence* v. *Geo. Matthews, Ltd.*, C. A.)

Court fee.—The Workmen's Compensation Act, 1925, Sched. I., clause 12 (which provides that no Court fee shall be payable by a workman in respect of proceedings under the Act), does not relieve a workman who has been ordered to pay the employer's costs from reimbursing the Court fee paid by the employer. (*Elwell* v. *Crane Foundry Co., Ltd.*, C. A.)

Dependants.—In considering whether a workman leaves "dependants" for the purposes of the Workmen's Compensation Act, 1925, regard must be had not only to circumstances existing in the past, but also to the probabilities of the future. If, therefore, a workman had, at a time when in full employment, made contributions towards the applicant's maintenance, although at the time of the accident, being out of regular employment, he had ceased to make such contributions, in deciding whether the applicant is a "dependant," regard must be had to the probability

of such contributions being received on return to full employment. (*Lee* v. *Munro,* C. A.)

Discontinuance of payments: Action in High Court.—Weekly payments made voluntarily to a workman under the Workmen's Compensation Act, 1925, were discontinued otherwise than in conformity with sect. 12 of the Act. The workman sued in the High Court for damages for breach of the statutory duty to continue such payments while proceedings were still pending in the County Court in an application by the employers under sect. 11 of the Act for a declaration that the workman's incapacity ceased at a date earlier than that at which payment was discontinued, but failed in his action. He was not entitled to compensation after incapacity had ceased, and whether incapacity continued during the relevant period was an issue which only the County Court could try. Consequently he could not show that he was damnified by the discontinuance of the payments. Sect. 12 imposes no obligation on the employers to continue their weekly payments to the workman pending an award deciding whether or not incapacity had ceased. [*Semble,* that this action would not in any case lie, as it raised a question as to the duration of compensation, which was a matter for arbitration under sect. 21 of the Act.] (*Catton* v. *Ashwell and Nesbitt, Ltd.*, C. A.)

"For the purpose of, &c."—A workman was engaged as shot firer in a mine. A shot having misfired, the workman, instead of drilling a fresh hole as required by statutory regulations, drilled out the shot which had misfired. In the explosion which resulted the workman was killed. It was held that his widow was entitled to compensation. The Court of Appeal distinguished *M'Ferrin's Case,* (1926) A. C. 377. The workman's intention to save himself trouble was immaterial: what he did was in fact done for the purposes of and in connection with his employer's business. (*Stokoe* v. *Mickley Coal Co., Ltd.*)

Measure of compensation.—A workman who, but for an accident arising out of and in the course of his employment, would have continued to be employed as a skilled workman, is, owing to the accident, reduced to the grade of unskilled labour. In that grade, owing to the state of the labour market, work is not obtain-

able. He is not entitled to compensation as for total disablement. He can only claim as for partial disablement. No compensation is payable under the Workmen's Compensation Act, 1923 (now 1925), for inability to find work owing to the state of the labour market. (*Bevan* v. *Nixon's Navigation Co., Ltd.*, H. L.)

Post office.—For a decision on the effect of the Workmen's Compensation Act, 1925, and the order extending its provisions to telegraphist's cramp, see *R.* v. *Postmaster-General, Ex parte Carmichael.*

"Previous twelve months": Strike.—A workman has not been employed for "the previous twelve months" within the Workmen's Compensation Act, 1925, s. 9 (2), if during the period in question his employment was terminated during the coal strike. The workman had been employed as a riveter on piece-work with the same employers for about eight years. From September 3rd to December 8th, 1926, he was unemployed as a result of the coal strike. Resuming work, at a slightly higher rate of wages than before, on December 8th, 1926, he met with an accident arising out of and in the course of his employment on January 11th, 1927. Compensation could not be assessed by reference to the rate of earnings for the twelve months prior to the accident. (*Gardner* v. *Vickers, Ltd.*, C. A.)

Rules.—The rules were consolidated by the Workmen's Compensation Rules, 1926. (S. R. & O. 1926, No. 448/L. 12, price 2*s.* 10*d.*) Further rules are the Workmen's Compensation (Silicosis) Rules, 1927 (S. R. & O. 1927, No. 392/L. 18, price 1*d.*), and the Workmen's Compensation (Danish Convention) Rules, 1927. (S. R. & O. 1927, No. 393/L. 19, price 2*d.*)

State of labour market.—A workman, who is partially incapacitated by an accident so that in the ordinary way he would be entitled to compensation under the Workmen's Compensation Act, 1925, is still entitled to compensation, although the state of the labour market is such that in any event and apart from his incapacity he would be unemployed. The compensation is payable for the incapacity to earn in a normal state of the labour market, and is not affected by the occurrence of such a special

circumstance as a coal strike making employment generally impossible. (*Lewis* v. *Guest, Keen and Nettlefold's, Ltd.*; *Watkins* v. *Same*; *Tucker* v. *Same*; *Ingram* v. *Crawshay Brothers (Cyfartha), Ltd.*, C. A.)

Workman: Commercial traveller.—A commercial traveller was engaged at 450*l.* per annum, but subsequently, for income tax purposes, induced his employers to write a letter showing his salary at 150*l.* with 300*l.* for expenses. He was not necessarily in consequence a workman within the Workmen's Compensation Act, 1925. The Court of Appeal upheld the decision of the County Court judge that the real salary exceeded 350*l.* per annum, and the traveller was, therefore, outside the Act. It would have been open to him to show that his expenses in fact reduced his salary below this figure, but no evidence having been given as to this, and the letter being shown to be merely for income tax purposes, the County Court judge's order was right. (*Skidmore* v. *Bullock Lade & Co., Ltd.*, C. A.)

Workman, meaning of.—A young man unemployed and unskilled, who is being given a course of instructional training at a Government instructional centre, is not entitled to compensation under the Workmen's Compensation Act, 1925. The terms upon which the course was entered on negatived the possibility of the case being that of a workman under a contract of service within the meaning of the Act. (*Watson* v. *Government Instructional Centre, Birmingham*, C. A.)